LITTLETONS TENVRES

in English.

Lately perused and amended.

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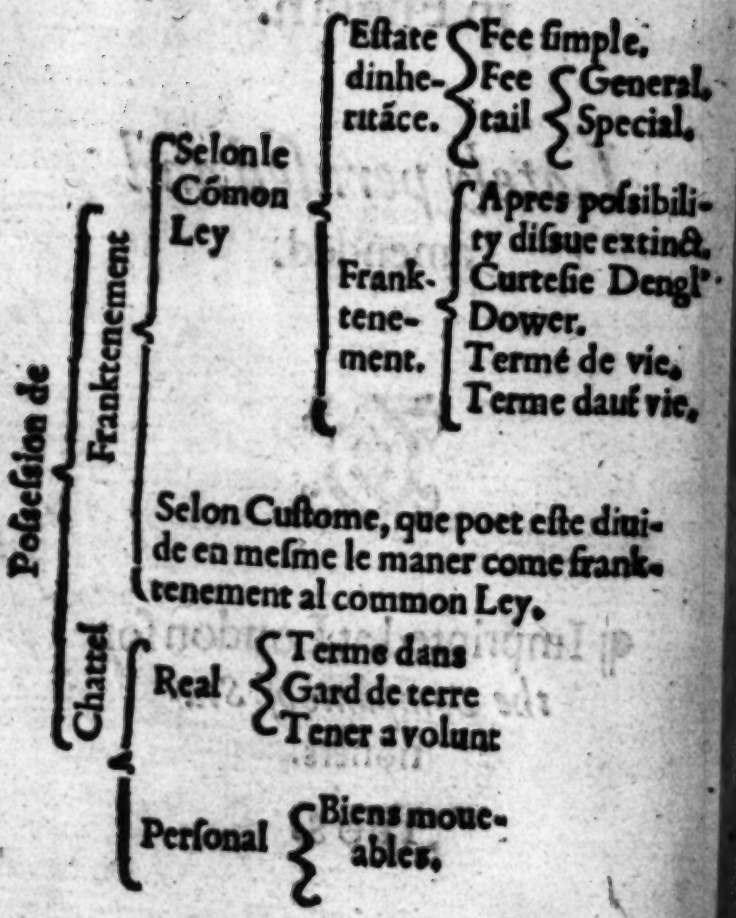
1608.

Cum Priuilegio Regiæ Maiestatis.

A figure of the diuision of Possessions.



BRITISH MUSEUM

TEnant in fée simple is he which hath landes or tenements to holde to him and to his heires for euer: and it is called in Latine Feodum simplex: for Feodum is called inheritance, and Simplex is as much to say, as lawfull or pure, and so Feodum simplex, is as much to say, as lawfull or pure inheritance: For if a man will purchase landes or tenements in fée simple, it behoueth him to haue these wordes in his purchase, To haue and to hold vnto him and to his heires: for these wordes (his heires) make the estate of inheritance, Anno 10. Henrici 6. fol. 38. for if any man purchase land by these wordes: To haue and to hold to him for euer: or by such wordes, To haue and to hold to him and to his assignes for euer, In these two cases he hath none estate but for terme of lyfe, for that that he lacketh these wordes (his heires,) which wordes only make the estate of inheritance in all feoffements and graunts.

And if a man purchase lands in fée simple, & die without issu, euery one that is his next cosin collaterall, of the whole blood, how far soeuer that he be from him of degrée, may inherit & haue the same land as heire vnto him. But if there be father and son, & the father hath a brother which is vncle vnto the son, & the son purchaseth land in fée simple, & dieth without issu liuing ye father, the vncle shal haue the land, as

heire vnto the sonne, and not to the father (yet the father is more nigh of blood vnto the son,) for that that there is a ground in the law, that inheritance may lineally discend, but not lineally ascend: yet if the son in such case die without issue, & his vncle entreth into the land as heire vnto the son (so as he ought by the law) and after if the vncle decease without issue leauing the father, then shall the father haue the land as heir vnto the vncle, & not as heir vnto the son, for that that he commeth vnto the land by collateral discent, & not by lineal ascention.

And in such case where the son purchaseth land in fee simple, and dieth without issue, they of his blood on the fathers side shall inherite as heire vnto him, before any of the blood of the mothers side. But if he haue no heire on the fathers side, then shal the land discend vnto his heire on the mothers side. And this is the opinion of the Justices M. 12. E. 4. fol. 35. But there it was holden if any land discend vnto a man by the fathers side which dyeth without issue, that his next heire on the fathers side shal inherit vnto him, that is to say, the next of blood of the father of the graundfathers side. And for default of such an heire, they that be of the fathers blood of the part of the mother of the father, (that is to say) the graundmother ought to inherite. And if there be no such heire on the fathers side, then the Lord shall haue the land by Escheate. And so it is if a man take a wife inheritor in fee simple,

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which hath issue a sonne and dyeth, and the sonne entreth into the tenements as sonne and heire vnto his mother, and after dyeth without issue, the heires on the mothers side ought to inherite the tenements, and not the heires on the fathers side.

And if there be no heires on the mothers side, then the Lord of whom the same land is holden, shall haue the same land by escheat. In the same manner it is if lands discend vnto the sonne on the fathers side, which entreth, & after dyeth without issue, the land shal discend vnto the heires on the fathers side, & not vnto the heires on the mothers side. And if there be none heires on the fathers side, then the Lord of whom the land is holden, shal haue the same land by escheat. And so ye may see the diuersitie, where the sonne purchaseth landes in fee simple, and where he commeth vnto those lands or tenements by discent on the fathers side, or on the mothers side.

Also if there be three brethren, & the middle brother purchaseth lād in fee simple and dyeth without issue, the elder brother shall haue the land by discent & not the yonger. Also if there be three brethren, and the yongest brother purchaseth land in fee simple and dyeth without issue: the elder brother shall haue the land by discent, & not the middle brother, for that that the elder brother is more worthy of blood.

And it is to be vnderstood, that no man shal haue land in fee simple by discent as heire vnto

any man, vnlesse he be his heire of the whole blood. For if a man haue issue two sonnes by two venters, and the elder purchaseth land in fee simple and dieth without issue, the ponger brother shal not haue the land, but the vncle of the elder brother, or some other his nigh cosin shall haue it, for that that the ponger is but of the halfe blood to the elder brother. And if a man haue a sonne and a daughter by one venter, and a sonne by another venter, & the sonne by the first venter purchaseth land in fee simple and dieth without issue, the sister shal haue the land by discent as heire vnto her brother, and not the ponger brother, for that that the sister is of the whole blood to her elder brother.

And also where a man is seised of land in fee simple, and he hath issue a son and a daughter by one venter, and a sonne by an other venter and dyeth, and the elder son entreth, and dyeth without issue, the daughter shall haue the land and not the ponger sonne, and yet is the ponger son heire vnto his father, but not vnto his brother. But if the elder sonne enter not into the land after the death of his father, but dieth before entrie be made by him, then the ponger brother may enter and haue the land as heire vnto his father. But where the elder sonne in the case aforesaid, entreth after the death of his father, and thereof haue possession, then the sister shal haue the land: Quia possessio fratris de feodo simplici, facit sororem esse hered', for the possession of the brother in fee simple

ple maketh the sister to be be heire.

But if there be two brethrē by diuers benters, and the elder is seised in fee simple and dieth without issue, and his vncle entreth as heire vnto him, which also dieth without issue, thē the yonger brother may haue the land as heire vnto his vncle, because he is of the whole bloud to him, though he be but of halfe bloud vnto his elder brother.

And it is to be vnderstood that this worde (Inheritance) is not onely vnderstood where a man hath landes or tenements by discent of heritage: But also euery fee simple or fee taile that a man hath by his purchase, may be said inheritance, for that, that his heires may inherite them. For in a writ of Right that a man bringeth of land, that was of his owne purchase, the writ shall say: Quam clamat esse ius & hæreditatem suam, That is to say, which he claimeth to be his right & his inheritance. And so it shall be said in diuers other writs which a man or a woman bringeth of their owne purchase, as it appeareth by ỹ Register.

And of such thinges as a man may haue a manuell occupation, possession, or receite, as of lands, tenements, rents, and such other, a man shall say in his pleading, and way of barre, that one such was seised in his demeine as of fee. But of such things as lye not in manuel occupation &c. as of Aduowson of a Church, and such maner things: there he shall say, that he was seised as of fee, and not in his

demeine as of fée. And in latin it is in ỹ same cale said, Quod talis fuit seisitus in dominico suo vt de feodo, that is to say, that such a one was seised in his demeine as of fee, and in the other, Quod talis fuit seisitus vt de feodo, that is to say, that one such was seised as of fée.

And note well that a man may not haue a more large ne greater estate of inheritance, then fée simple.

Also, purchase is called ỹ possessiõ of lands or tenements that a man hath by his deede or by his agreément, vnto which possession he cõmeth, not by discent of any of his ancestors, or of his cosins, but by his owne deed.

Fee taile.

TEnant in fée taile is by force of a statute of Westminster the second, capitulo primo. For at the cõmon law before the said statute, all inheritances were fée simple. For all the gifts which bin specified within the said statute, were fee simple cõditionally, as it appeareth by the rehearsall of the statute. And now by the same statute tenant in the taile is said in two maners, that is to say, tenant in tayle generall, and tenant in tayle speciall.

Tenant in taile generalll, is where landes or tenements be giuen to a man and to his heires of his body begotten. In this cale it is said generall taile, for that that whatsoeuer woman that the tenant taketh to wife, if he haue many wiues, and by each of them hath

ſſiue, yet each one of theſe iſſues by poſſibilitie may inherite the tenements by force of the ſaid gift, becauſe that euery ſuch iſſue is of his body ingendred.

In the ſame maner it is where lands & tenements be giuen to a woman & to the heires comming out of her bodie, howbeit that ſhe haue many huſbands, yet ꝑ iſſue that ſhe may haue by each huſband, may inherite as iſſue in the taile, by force of ſuch gifts. And therefore ſuch gifts been called generall tayle.

Tenant in taile ſpeciall, is where landes and tenements be giuen vnto a man and his wife and the heires of their two bodies begotten. In ſuch caſe none may inherite by force of ſuch gife, but thoſe that be ingendred betweene them two, and it is called eſpeciall taile, for that if the wife die and he taketh another wife and hath iſſue, the iſſue of the ſecond wife ſhall neuer inherite by force of ſuch gift. Nor alſo the iſſue of the ſecond huſband if the firſt huſband die.

In the ſame maner it is, where lands and tenements be giuen by a man vnto another with a wife, which is the daughter or coſin to the giuer, in Frankmariage, which gift hath inheritance by theſe wordes (Frankmariage) vnto it annexed, howbeit that it be not expreſſly ſayd or rehearſed in the gift, that is to ſay, that theſe Donees ſhall haue theſe landes or tenements to them and to their heires betweene them two ingendred, and this

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is said especiall tayle, for that the issue of the second wife may not inherit.

And note well, that this word Talliare, is to say, to set vnto some certaintie, or els limit vnto some certaine inheritance: And for that that it is limitted & set in certaine, what issue shall inherite by force of such gifts, and how long that the inheritance shall indure: Therefore it is called in Latin, Feodum talliatum. i. hæreditas in quadam certitudine limitata. For if tenant in generall taile die without issue, the donor or his heires shall enter as in their reuersion: In the same wise is it of the tenant in the tayle speciall &c. For in euery gift of the tayle without more saying, the reuersion of fée simple is in the donour.

And the donées and their heires shall doe to the donour and to his heires such seruices as the donour doth vnto the Lord next aboue. Except the donées in frankmariage, which shall hold quietly from euery manner seruice, (vnlesse it be for Fealtie) vntill the fourth degrée be past. And after that the fourth degrée is past, the issue in the first degrée, and so forth, the other issues after him, shall hold of the donour & of his heires as they hold ouer, as is aforesaid.

And the degrées in franke mariage shall be accompted in such maner, that is to say, from the donour to the donées in frankmariage the first degrée, for that that the wife that is one of the donées ought to be daughter, sister, or

other

other colin to the donor. And from the donées vnto their issue shall be acompted the second degree. And from their issue vnto their issue, the third degree, and so forth &c.

And the cause is, for that after euery such gift, the issues that come of the donor, and the issues that come of the donées after the fourth degree past of both parties in such fourme to be accompted, may betwixt them by the law of holy Church intermarrie. And that the donée in frankmariage shall be the first degree of the fower degrées, a man may sée in a plea vpon a writ of Right of warde, Anno 31. Edwardi 3. where the plaintife pleadeth that his ayel or grandfather was seyled of certaine landes &c. And that he heilde of an other by knights seruice &c. which gaue the land vnto one Raufe Holland with his sister in frankmariage &c. And also these tailes beforesaid, be specified in the said statute of Westminster the second.

And there bée diuers other estates in the taile, howbeit that they be not specified by expresse wordes in the said estatute, but they be taken by the equitie of the Statute: As if landes be giuen vnto a man and to his heires males of his bodie engendred, in such case his heire male shall inherite, and the issue female shall neuer inherite: yet in these other tailes aforesaid it is otherwise. In the same maner it is if lands be giuen to a man and to his heires females of his bodie ingendred.

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In this case his issue females shall inherite by force and fourme of the said gifte, and not the issue male, for that in such cases where the gift is who ought to inherite, and who not, the will of the donour shall be obserued.

And in case where lands be giuen vnto a man & to his heires males issuing of his body, and he hath issue two sonnes & deceaseth, the elder sonne entreth as heire male, & hath issue a daughter and deceaseth, his brother shall haue the land and not the daughter, for that the brother is heire male. But it shalbe otherwise in these other tailes aforesaid, which been specified in the said statute, the daughter shall inherite before the brother.

And if lands be giuen vnto a man, and to his heires males of his body ingendred, and he hath issue a daughter, which hath issue a sonne and deceaseth, and after that the donour deceaseth: in this case the sonne of the daughter shall not inherit by force of the taile, for that whosoeuer shall inherit by force of a gifte in the tayle made vnto the heires males, behoueth to conuey his discent alwayes the males, Mich. decimo octauo Edwardi tertij fol. 25. But in such case the donee shall enter, for that the donée is dead without issue male in the law. In somuch that the issue of the daughter may not conuey to him the discent by heire male. And in the same maner it is where lands be giuen to a man and to his wife and to his heires

males

males of their two bodies ingendred.

Also, if tenements be giuen to a man and his wife, and to the heires of the body of the man ingendred, in this case the husband hath estate in the generall taile, and the wife but estate for terme of life.

And if lands be giuen to the husband and to the wife, and to the heires of the husband which he ingendreth of the body of the wife: In this case the husband hath estate in the speciall taile, and the wife but for terme of life.

And if the gift be made to the husband and to the wife, and to the heires of the wife of her body by the husband ingendred: then the wife hath estate in the speciall taile, and the husband but for terme of life. But if lands be giuen to the husband and the wife, and to the heires that the husband ingendreth on the body of the wife: In this case both haue estate in the taile, for that this word (heires) is limitted no more to the one then to the other.

Also if lands be giuen to a man and to his heires that he ingendreth on the body of his wife: In this case the husband hath estate in the taile speciall, and the wife nothing.

Also if a man haue issue a sonne, and deceaseth, and the land is giuen to the sonne, and to the heires of the body of his father ingendred, this is a good taile, and yet the father was dead at the time of the gift.

Also there be many other estates in the taile by the equitie of the said estatute, that be not specified here. But if a man giue landes or tenements to an other, to haue and to hold to him and to his heires males, or to his heires females, he to whom such gift is made hath fee simple, for that it is not limitted by the gift of what body the issue male or female shall be, and so it may not in any thing be taken by the equitie of the said estatute, and therefore he hath fee simple.

Tenaunt in taile after possibilitie of issue extinct.

TEnant in the taile after possibilitie of the issue extinct, is where as landes or tenements be giuen vnto a man and to his wyfe in speciall taile, if one of them decease without issue, he that suruiueth is tenant in the taile after possibilitie of issue extinct. And if they haue issue, during the life of the issue, he that suruiueth shall not be said Tenant in the taile after possibilitie of issue extinct: yet if the issue decease without issue, so that there bee none aliue that may inherite by force of the taile, then he that suruiueth of the donées is tenant in the taile after possibilitie of issue extinct.

Also, if landes bee giuen to a man and to his heires that be ingendred on the body of his wife: In this case the wife hath nought in the tenements, and the husband is seised

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as donée in speciall tayle. And in this case if the wife decease without issue of her body ingendred by her husband, then the husband is tenant in the tayle after possibilitie of issue extinct.

And note well, that none may be tenaunt in the taile, after possibilitie of issue extinct, but one of the donées, or the donée in speciall taile, for the donée in general taile may neuer be said tenant in the taile after possibilitie of issue extinct, for that alway during his life, he may by possibility haue issue that may inherite by force of the same taile. And so in the same manner the issue that is heire vnto the donées in a speciall tayle, may not be said tenant in taile after possibility &c. causa qua supra.

And tenant in taile after possibility of issue extinct shall neuer be punished of wast, for the inheritance that once was in him, Anno 10. Hen. 6. fol. 1. But he in the reuersion may enter if he doth alien in fée. An. 45. E. 3. fol. 22.

Tenant by the Curtesie of England.

TEnaunt by the Curtesie of England, is where a man taketh a wife seised in fée simple, or in fée taile generall, or as heire in the taile special, & hath issue by the same wife male or female borne aliue. The issue after being deade or aliue, if the wife decease the husband shall hold the same during his life by the Law

of

of England, and this is called tenant by the Curteſie, for that it is not vſed in any other Realme but onely in England. And ſome ſay that he ſhal not be ſaid tenant by the Curteſie, but if the childe that hée hath by his wife be heard cry, for by the cry is the proofe that the child that he had by his wife, was borne alive.

Tenaunt in Dower.

TEnant in Dower is, where a man is ſeiſed of certaine lands or tenements in fée ſimple or in generall taile, or as heire in the taile ſpecial, and taketh a wife and deceaſeth, the wife after the deceaſe of her huſband ſhalbe endowed of the third part of ſuch lands or tenements that were her huſbands any time during the couerture, to haue & to hold to the ſame wife in ſeueralty, by meétes and bounds for terme of her life, whether ſhée haue by her huſband iſſue or none, and of what age that the wife be, ſo that ſhée paſſe the age of nine yeares at the time of her huſbands death, or elſe ſhe ſhall not be endowed.

And note well, that by the common law the wife ſhall not haue for her Dower but the third part of the tenements, which were her huſbands during the eſpouſels. By cuſtome in ſome countrey ſhe ſhall haue the halfe, and by cuſtome of Towne, or Borough, ſhée ſhall haue the whole: And in all theſe caſes ſhe ſhal be ſaid tenant in Dower.

Also there is two other maner of Dowers, that is to say, dower called dowment at the Church dore, and dower called dowment by the fathers assent. Dowment at the church dore, is where a man of full age is seised in fee simple which shall be wedded vnto a wife, when hee commeth to the Church dore, and there after affiance and truth pleight made betweene them, endoweth his wife of his whole land, or of the halfe, or lesse parcell, and there openly declareth the quantitie, and the certainty of his land that shee shall haue for her Dower: In this case the wife after the death of her Husband shall enter into the said quantity of land, of which her husband endowed her without the assignement of anie man. Dowmēt by the fathers assent is: where the father is seised of lands or tenements in fee, and his sonne and heire apparant (when hee is wedded) endoweth his wife at the Church dore of parcell of the landes or tenemēts of his fathers, by the assent of his father, and assigneth the quantity of the parcels: In this case after the death of the sonne, the wife shall enter into the same parcell without the assignement of any other. But it hath bin said in this case, that it behoueth the wife to haue a deede of the father, prouing his assent and consent of such endowment. And if after the death of her husband shee enter and agree to any such dower of the said two dowers at the Church dore, then she is concluded to clayme

any other Dower by the common law of any landes or tenements, which were of the sayd husband. But if shee will, shee may refuse such dower at the Church dore, and then shee may be endowed after the course of the Common Law. And note well, that no wife shall be endowed of the fathers assent, in the forme aforesaid, saue where the husband is sonne & heire apparant to his father.

Inquire of these two cases of Endowement at the Church dore &c. if the wife at the time of the death of her husband passe not the age of nine yeeres, if shee shall haue such dower or no.

And note well, that in all cases where the certaintie appeareth, what landes or tenements the wife shall haue for her Dower, the wife may enter after the death of her husband, without assignement of anie other: But where the certaintie appeareth not, as to bee endowed of the third part, to haue in seuerall, or to be endowed of the halfe after the custome to hold in seueralty: In such cases it behoueth that her Dower bee vnto her assigned after the death of her husband, because it is not limitted before the assignement, what partes of landes or tenementes shee shall haue for her Dower. But if there be two Ioyntenants of certaine landes in fee, and the one alieneth that that to him pertayneth and belongeth, to another in fee, which taketh a wife and after dyeth: In this case

the wife for her Dower shall haue the third part of the halfe that her husband purchased, to hold in common, and occupie in common, as her part amounteth, with the heire of her husband, and with the other Iointenaunt which alienedd not, for that in such case her Dower may bee assigned by meetes and boundes.

And it is to bee vnderstoode, that the wife shall not be endowed of landes or tenements that her husband iointly held with an other at the time of his death. But where he holdeth in common otherwise it is, as in the case aforesaid. And it is to wit, that if the tenant in taile endowe his wife at the Church dore as is aforesaid, that shall serue for little or nought to the wife, for that, that after the death of her husband the issue in the taile may enter vpon the possession of the wife, and so may he in reuersion if there be no issue in the taile aliue.

Also, if a man seised in fee simple being within age, endow his wife at the Church dore, and dyeth, and the wife entreth: In this case the heire of the husband may put her out. But otherwise it is as it seemeth where the father is seised in fee, and the sonne within age endowe his wife, of his fathers assent, the father then being of full age.

And there is another Dower which is called Dowment De la pluis beale: And that is in such case, that a man is seised of xl. acres

of land, and he holdeth xx. of the said xl. acres of one man by knights seruice, and the other xx. acres of another in socage, and taketh a wife, and hath issue a sonne, and dyeth, his sonne being within the age of fourteene yeres, and the Lord of whom the land is holden by knights seruice, entreth into the xx. acres of land holden of him, and them hath and occuppyeth as Warden in chiualrie during the childes nonage, and the childes mother entreth in the remnant, and it occuppyeth as garden or warden in Socage: If in this case the wife bring a writ of Dower against the warden in Chiualrie, to bee endowed of the tenements holden by knights seruice in the kings Court, or in any other Court, the Garden in chiualrie may plead in such case all the matter, and shew how the wife is warden in Socage as is aforesaid, and pray that it may be adiudged by the Court, that the wife endow her selfe of the most faire, called Plus beale, of the tenements that she hath as warden in socage, after the value of the third part that she clayneth to haue of the tenements in chiualrie by her writ of Dower, and if the wife may not gainesay it, then the iudgement shall be made, that the warden in chiualry shal hold the lands holden of him during the nonage of the childe quite from the woman &c. And that the woman may endow her selfe of the most faire part of the landes that she hath as warden in Socage to the value of the third

part

part that the warden in chiualry hath &c.

And after such iudgement giuen, the wife may take her neighbors, and in their presence endow her selfe by mætes and bounds of the fayrest part of the tenements that shée hath, as warden in Socage, to the value of the third part of the lands that the warden in Chiualry hath, and that to haue and holde for terme of her life. And such Dower is called Dower of the fayrest part, or De pluis beale.

With this agréeth P. 45. Edw. 3. fol. 4. But there it was said, that after the time that the heire comes to his full age, the wife shall haue a new action of Dower against the heire, to be endowed of the third part of all that the man died seised. And note well, that such dowment may not be, but where the iudgement is giuen in the kings court, or in some other court. And the wife may do this for saluation of the estate of the warden in chiualry during the nonage of the child. And so yée may sée fiue manner of Dowers: that is to say, Dower by the common Law, Dower by custome, Dower at the Church dore, Dower of the Fathers assent, and Dower of the most faire. And remember that in euery case where a man taketh a wife seised of such estate of tenements &c. so that the issue that he hath by his wyfe may by possibilitie inherite the same tenements of such estate that the wife hath, as heire to the wife: In such case after the wife is dead, hée shall haue the same tenements by the Curtesie of Eng-

land and otherwise not.

And also in euery case where the wife taketh an husband seised of such estate of tenements &c, so that by possibility it may happen the wife to haue some issue by her husband, and that the same issue may by possibilitie inherite the same tenements of such estate that the husband had as heire to his Father, of such tenements she shall haue her dower, and otherwise not. For if the tenements be giuen vnto a man and to his heires that he getteth on his wiues body, in such case the wife hath nought in the tenements, and the husband hath estate but as donée in special taile. Yet if the husband die without issue, the same wife shal be endowed of the same tenements, for that the issue that shee by possibilitie might haue had by the same husband, may inherite the same tenements. But if the wife decease, lyuing the husband, which after taketh another wife, the second wife shall not be endowed in this case. Causa qua supra.

A man was seised of certaine landes, and tooke wife, and after aliened the same landes with warrantie, and after the feoffour and the feoffée died, & the wife of the feoffor bringeth an action of Dower against the issue of the feoffée, and he vouched the heire of the feoffour, and during the voucher and not determined, the wife of the feoffée bringeth an action of Dower against the heire of the feoffée, and demaundeth the third part of all that her husband was seised, and would not demaund

maund the third part of those two parts that her husband was seised, it was adiudged that shee should haue no iudgement vntill the time that the other plee were determined.

And also note that Vauisor saith, that if a man be seised of lands, and committeth felonie, and alieneth, & after is attainted, the wife shall haue good action of dower against the feoffee. But if it be eschcated vnto ỹ king, or vnto the Lord, shee shall haue no writ of dower. And so see the diuersitie, and inquire the cause.

Tenant for terme of life.

TEnant for terme of life is, where a man letteth landes or tenements to another for terme of life of the lessee, or for terme of life of another man: In such case the lessee is tenant for terme of life. But by common language, hee that holdeth for terme of his owne life, is called tenant for terme of life, and hee that holdeth for terme of another mans life, is called tenaunt for terme of another mans life. And it is to be vnderstood, that there is feoffour and feoffee, donour and donee, lessour and lessee. The feoffour is properly where a man infeoffeth another in any landes or tenements in fee simple, he that maketh the feoffement is called the feoffor, and he to whom the feoffement is made, is called ỹ feoffee. And the donour is properly, where a man giueth certaine landes or tenements to another in

the taile, hée that maketh the gift is called donor, and hée to whom the gift is made is called donée. And lessour is properly where a man letteth to another certaine lands or tenements for terme of life, for terme of yéres, or to hold at will, hée that maketh the Lease is called lessour, and hée to whom the Lease is made is called lessée, and euery one that hath estate in landes or tenements for terme of his owne life, or for terme of another mans life, is called tenant of freehold. And none of lesse estate may haue freehold, but they of greater estate may haue freehold, for tenaunt in fée simple hath freehold, and tenant in the tayle hath also freehold.

Tenant for terme of yeares.

TEnant for terme of yéres is, where a man letteth landes or tenements to another for terme of certaine yéres after the number of yeres that is accorded betwéene the lessor and the lessée, and when the lessée entreth by force of ỹ lease, then is he tenant for terme of yeres, and if the lessor in such case reserue to him a yérely rent vpon such lease, hée may chose for to distraine for the rent in the tenements letten, or els hée may haue an Action of debt for the arrerages against the lessée. But in such case it behoueth that the lessour be seised in the same tenements at the time of his lease, for

it is a good plée for the lessée to say, that the lessor had nothing in the tenemẽts at the time of the lease, except the lease be made by déed indented, in which case then such plée lieth not for the lessée to plead.

And it is to be vnderstood, that in a Lease for terme of yéres, by déed or without déed, it néedeth no liuery of seisin to be made to the lessée, but he may enter whensoeuer hée will by force of the same lease. But of feoffements made in the Countrey or gifts in the tayle, or leases for terme of life, in such cases where fréehold shall passe, if it be by déed or without déed, it behoueth to haue liuery of seisin &c. But if a man let landes or tenements by déed or without déede for terme of yéres, the remainder ouer to another for terme of life, or in the taile, or in fée, then in such case it behoueth that the lessor make liuery of seisin to the lessée for terme of yéres, or els there shall nothing passe to them in the remainder, though the lessée enter in the tenemẽts. And if the termor in such case enter before any such liuery of seisin made vnto him, then is the fréehold and the reuersion in the lessor. But if he make any liuery of seisin vnto the lessée, then is the fréehold with the fée to them in the remainder after the forme of the graunt, & will of the lessor.

And if a man will make a feoffement by déede or without déede, of landes or tenements that hee hath in many Townes in one Shire, if the liuery of seisin be made in one par-

parcell of the tenements in one Towne in the name of all, it sufficeth for all the other landes or tenements comprehended in the same feoffement, in all other townes in the same Shire. But if a mā make a deed of feoffemēt of lands or tenements in diuers Shires, there it behoueth him to haue in euery shire a liuery of seisin. And in some case a man shall haue by the graunt of another fee simple, fee taile, or freehold, without liuery of seisin. As if two men be, and each of them is seised of a quantitie of land within one shire, & the one graunteth his land to the other in exchange for that land that the other hath, and in the same maner the other granteth his land vnto the first grantor in exchange for the land that the first grantor hath: In this case each may enter in ỹ others lands so taken in exchange, without any liuery of seisin. And such exchange made by words, of tenements within the same Shire without any writing, is good enough. And if the landes or tenements be in diuers shires, that is to say, if that ỹ one haue in one shire, & ỹ the other haue in another shire, it behoueth to haue a deed indented made betweene them of such exchange.

And note, that in exchanges it behoueth that the estates that both parties haue in the lands so exchanged, be equall: For if the one willeth & granteth that the other shal haue his land in the taile, for the land that hee hath of the graunt of the other in fee simple, though the other agree to that, yet this exchange is but void, for

that

that the estates be not euen.

In the same maner it is where it is graunted and agreed betweene them, that the one shal haue in the one land fee taile, & the other shall haue in the other land but terme of life. Or if one shall haue in the one land fee taile generall, and the other in the other land fee taile especiall &c. So alway it behoueth that in exchange the estate of both parties be euen, that is to say, if the one haue fee simple in the one land, that the other shall haue such estate in the other land, and if the one haue fee taile in the one land, then the other shall haue likewise in the other land. Et sic de alijs statibus. But it is nothing to charge of the euen value of the lands, for though that the land of the one is so much more in value then the land of the other, this is nothing to the purpose, so that the estates made by the exchange be euen, and in exchange be two graunts, for euery partie graunteth his land to the other in exchange, and in each of their graunts mention shall be made of the exchange.

And if a man let land to an other for terme of yeres, though the lessor die before the lessee enter into the tenements, yet may he enter into the tenements after the death of the lessor, for that, that the lessee by force of the lease hath right incontinent to haue the tenements after the fourme of the lease. But if a man make a deede of feoffement vnto an other, and a letter of attorney to a man to deliuer to him

seisin

seisin by force of the same deed, yet if the liuery of seisin bee not made in the life of him that made the deede, it auayleth not for that the other hath no maner of right to haue the tenements after the purport of the deede before the liuerie of seisin &c. And if no liuerie be made, then after the death of him that made the deed, the right of such tenemēts is incontinently in his heire, or in some other. Also if tenements be let to a man for terme of haife a yeere, or for terme of a quarter of a yeere &c. In such case if the lessee make wast, the lessour shall haue against him a writ of wast, and the writ shall say, Quod tenet ad terminum annorum. But he shall haue a speciall declaration vpon the troth of this matter, and the plea shall not abate the writ, for that that he may haue no other writ vpon the matter. An. 7. H. 7. fol. 1.

Tenant at will.

TEnant at will is, where landes or tenements bee letten by a man vnto an other: to haue and to hold to him at the will of the lessor, by force of which lease the lessee is in possession: In such case the lessee is called Tenant at will, for that he hath no certaine sure estate, for the lessor may put him out at what time it pleaseth him: yet if the lessee sow the land, & the lessor (after the sowing and before that his graynes be ripe) put him out, yet shall the lessee haue his graynes, and shal haue free egresse and regresse to reap and to carrie

his

is graynes, for that he will not at what time his lessour would enter vpon him. Otherwise if a tenant for terme of yeres before the end of his terme soweth the land, and the terme end before that his graynes be ripe: In this case the lessor, or he in the reuersion shall haue the graynes, for that the fermor knew well the certeintie of his terme, & when his terme should be ended.

Also, if a house be let to a man to hold at will, by force of which the lessee entreth into the house, within which house he bringeth his houshold stuffe, and after the lessour putteth him out, yet shall he haue free entrie, egresse, and regresse in the same house by reasonable time to carrie his goods and houshold stuffe. And if a man be seised of a house in fee simple, fee taile, or for terme of lyfe, the which hath certaine goods within the same house, and maketh his executors and deceaseth, whosoeuer after his death hath the house, yet shal his executors haue free entrie, egresse, and regresse to carrie out of the house the goods of their testators by a reasonable time.

Also, if a man make a deede of feoffement vnto an other of certaine land, and deliuereth to him the deed, but no liuery of seisin: In this case he to whom the deede is made may enter into the land, and hold and occupie it at the will of him that made the deed, for that, that it is proued by the words of the deede, that it is his will that the other shal haue the land. But

he

he that made the deede, may put him out whe he will.

Also if an house be let to holde at will, the lessee is not holden to sustaine or repayre the house, as tenant for terme of yeeres is holden to do. But if the lessee at will make voluntarie waste, as in puling downe of houses, or in cutting or felling of trees: It is said that the lessour shal haue for that against him an action of Trespas. As if I deliuer to a man my sheep to dunge or marle his land, or mine oxen to eyre his land, and he slayeth the beasts, I may well haue an action of Trespas against him notwithstanding the deliuerie.

Also if the lessour vpon such lease at will reserue vnto him a yeerely rent, he may distrain for the rent behind, or haue for that an action of Debt at his owne choise. Hill' 6. Rich. 2. in a Repleuin.

Tenant by Copie of Court Rolle.

TEnant by Copie of Court Rolle is, as if a man be seised of a Manour, within which Manour there is a custome, & hath bin vsed in time out of minde, that certaine tenants within that same manour haue vsed to haue landes or tenements, to hold to them and to their heires in fee simple, or in fee taile, or for terme of life &c. at the will of the Lord, after the custome of the same Manor, and such a tenant may not alyen the land by deede, for the

the

the lord may enter as in a thing forfait to him. But if he will alien his land to another, him behoueth after some custome to surrender the tenements in some Court &c. into the Lordes handes, to the vse of him that shall haue the estate, in such forme, or to such effect.

Ad hanc Curiam venit A. de B. & sursum reddidit in eadem Curia, vnum messuagium &c. in manus dómini, ad vsum E. de A. & hæredum suorum, vel hæredum de corpore suo exeuntí vel pro termino vitæ suæ &c. Et super hoc venit prædictus E. de A. & cepit de domino in eadem Curia messuagium prædictum &c. Habendum & tenendum sibi & hæredibus suis, vel sibi & hæredibus de corpore suo exeuntibus, vel sibi ad terminum vitæ suæ, ad voluntatem domini, secundum consuetudinem manerij, faciend' & reddend. inde redditus debit', seruitia, & consuetudines inde prius debita, & de iure consuetas, Et dat domino de fine &c. Et facit domino fidelitatem &c. That is to say, A. of B. commeth vnto this Court, and surrendreth in the same court a mease &c. into the handes of the Lord, to the vse of E. of A. and his heires, or the heires issuing of his bodie, or for terme of life &c. And vpon that, commeth the foresaid E. of A. and taketh of the Lord in the same court, the foresaid mease &c. To haue and to hold to him and to his heires, or to him and to his heires issuing of his body, or to him for terme of life, at the Lordes will, after the custome of the manor to doe and yeild

there-

therefore rents, debts, seruices, and custome
thereof before due and accustomed &c. and
ueth the Lord for a fine &c. and maketh hi
the Lord his fealtie &c. And such tenants
called tenants by Copie of Court Rolle, f
that they haue no other euidences concerni
their tenements, but the Copies of the Co
Rolles: And such tenants shall not implea
nor be impleaded for their tenements by th
Kings writ. But if they will implead othe
for their tenements they shall haue a plai
made in the Court of the Lord in such form
or to such effect. A. de B. quæritur versus C. d
D. in placito terræ, videlicet, de vno messuagio
quadraginta acris terr', quatuor acris prati &c
cum pertinentijs. Et facit protestationem seq
querelam istam in natura breuis Domini Re
gis Assisæ mortis antecessoris ad communem
Legem, vel breuis domini Regis Assisæ nou
disseis. ad communem Legem, That is t
say, A. of B. complaineth against C. of D. o
a plee of land: that is to say, of a mease, an
fortie acres of land, foure acres of meadow
&c. with the appurtenances. And maketh
protestation to sue his plaint in nature of th
kings writ of Assise of the death of his ance
cestor at the common Law, or by a writ of ou
Soueraigne Lord the king, of Assise of nou
disseisin at the Common Law, or in nature
some other writ &c. pledges to prosecute, F. B
&c. And though that some such tenaunts ha
inheritance after the custome of the maner, y
they

y haue none estate but at the Lordes will, after the course of the common Law, for s said, if the Lorde put them out, they haue other remedy but to sue vnto the Lord by ition: For if they had any other remedie y should not be said tenants at the Lordes l after the custome of the Mannor, but the rd will not breake the custome that is rea- able in such cases. But Brian chiefe Iustice h, that his opinion alwaies hath beene, and aies shall be, if such a tenaunt by custome ying his seruices) be cast out by the Lord, hall haue an action of trespas against him, .E.4.fol.80 And like wise was the opinion Danby chiefe Iustice M.7.E.4.fol.19, for hee h that the tenant by the Custome, is aswel eritable to haue the land after the custome, well as hee that hath franktenement by the mon Law.

Enants by the Yarde, be in such nature as enants by Copie of Court Roll: But the se for which they be called tenaunts by the de, or yarde, is, for that when they will render their tenements into the Lordes nd, to the vse of another, they shall haue a tle yarde or rodde by the custome and vse, in ir handes, which they shall deliuer vnto Steward or Baylife, after the Custome d vse of the mannor, and hee that shall haue land, shall take the same land in the Court, d his taking shall bee entred in the Rolle. nd the Steward, or the bailife, according to

the custome, shall deliuer vnto him that taketh the land, the same yard or an other yard in the name of seisin. And for this cause they be called Tenants by the yard. But they haue none other Euidence but Copie of the Court Rolle.

And also in diuers Lordships and Mannors there is such a custome, if such a tenant that holdeth by the Custome will alien his landes or tenements, hee may surrender his lands vnto the Baylife, or to the Reeue, or to two honest men of ỹ same Lordship, to the vse of him that shall haue the land, to haue in fee simple, fee taile, or for terme of life &c. and all that shall be presented at the next Court. And then he that shall haue the land by Copie of Court Roll, shall haue the same land after the intent of the surrender. And it is to wit, that in diuers Lordships, & diuers manors, there be made diuers Customes in such cases, as to take tenements, & as to plead, & as touch ny other things and customes to be done, and all that, that is not against reason, may well be admitted and allowed. And such tenants that hold after the custome of a seigniory, or after the custome of a Mannor, though they haue estate of inheritance after the custome of the lordship, or of the manor, yet because they haue not any freehold by the course of the Common Law, they be called tenants of base tenure.

And diuers diuersities there be betweene a tenant at will, which is in by the leale of his

lesse

lessor by the course of the common law, and tenant after the custome of the manor in the fourme aforesaid. For tenant at will after the custome may haue estate of inheritance, as it is aforesaid at the lords will after the custome and vsage of the Manor: But if a man haue lands or tenements which be not within such Manor or Lordship where such custome hath been vsed in the fourme aforesaid, and will let such landes or tenements to another, to haue and to hold to him and to his heires at the wil of his lessor, these wordes, to the heires of the lessee be void, for this is the cause, if the lessee die, and his heire enter, the lessor shall haue a good action of Trespas against him, but not so against the heire of the tenant by the custome in any case &c. for that the custome of the Manour in some case may helpe him to barre his Lord in an action of Trespas.

Also Tenant by the custome in some places ought to repaire and sustaine the houses, and the other tenant at will ought not. Also one by the custome shall doe fealtie, and the other not. And diuers other diuersities there be betweene them.

Thus endeth the first booke.

HOmage is the moſt honourable ſeruice and moſt humble ſeruice of reuerence that a Franktenaunt may doe to his Lord: For when the Tenaunt ſhall make Homage to his Lord, he ſhall be vngirt, and his head vncouered, and his Lord ſhall ſit, and the Tenaunt ſhall kneele before him on both his knees, and hold his hands iointly together betweene the handes of his Lord, and ſhall ſay thus. I become your man from this day forwarde of life and limme, and of earthly worſhip, and vnto you ſhall be true and faithfull, and beare you faith for the tenements that I claime to holde of you, (ſauing the faith that I owe vnto our Soueraigne Lord the king.) And then the Lord ſo ſitting ſhall kiſſe him.

But if an Abbot, or Prior, or any other man of religion ſhall make homage vnto his Lord, he ſhall not ſay, I become your man, for that he hath profeſſed himſelfe onely to be Gods man: But he ſhall ſay thus, I doe you homage, and vnto you ſhall be true and faithfull, and beare you faith for the tenements that I claime to hold of you: Sauing the faith that I owe vnto our ſoueraigne Lord the King.

Alſo, if a woman ſole ſhall make Homage vnto the Lord, ſhee ſhall not ſay, I become your woman, for that is not conuenient for a woman to ſay, that ſhee ſhall become a woman to any but onely to her huſband

band when she is wedded, But shee shall say, I make vnto you Homage, and to you shall be true and faithfull, and shall beare you faith for the tenements that I hold of you, sauing the faith that I owe to our soueraigne Lord the King.

But if a man haue seuerall tenancies which he holdeth of seuerall Lordes, that is to say, euery tenancy by homage: Then when he maketh homage vnto one of his Lordes, he shall say in the end of his homage, Sauing the faith that I owe vnto the King, and vnto my other Lords.

And note well, that none make Homage, but such as haue estate in fee simple, or in fee taile in his owne right, or in any other mans right: For it is a ground in the Law, that he that hath estate but for terme of life, shal make none homage, nor take none homage.

For if a woman haue landes or tenements in fee simple, or in fee tatle, which shee holdeth of her Lord by homage, and taketh an husband, and hath issue then the husband in the life of the wife shall make homage, for that he hath title to haue the land by the curtesie, if he suruiue his wife. And also he holdeth in the right of his wife. But afore issue betweene them, the homage shall be made in both their names: But if the wife decease before homage made by the husband in the wiues life, and the husband holdeth himselfe in as tenant by the curtesie, he shall make no homage vnto

his Lord, for that he hath then none estate but for terme of life. More shall be said of Homage in the tenure of Homage auncestrell.

Fealty.

FEalty is as much to say, as Fidelitas in Latin, and when a franktenant shall make fealty vnto the Lord, he shall hold his right hand vpon a booke, and shall say thus:

Heare you this my Lord, that I vnto you shall be faithfull and true, and beare you faith for the landes & tenements, that I claime to hold of you, and truely to you shall do the customes and seruices that I ought to do vnto you at termes assigned, as God me helpe & all his Saints, & then he kisseth the booke: But he shall not kneele when he maketh his fealty, nor shall make such humble reuerence, as is aforesaid in Homage. And great diuersitie there is had betweene making of Fealty, and of Homage: For homage may not be made but to the Lord himselfe. But the Steward of the Lords court, or the Baylife may take Fealty for the Lord.

Also tenant for terme of life shall make fealty, and yet he shall make none homage. And diuers other diuersities there be betweene mage and fealty.

Also a man may see a good note, Anno 15. Edw. 3. where and how a man and his wife made homage and fealty in the common banke, which is written in such forme. Note that

John

John Lewknor & Elizabeth his wife made homage vnto William Thorpe in this manner: The one and the other held iointly their hands betweene ꝑ hands of William Thorpe, and the husband said in this wise: Wee vnto you make homage, and beare you faith for the lands that wee hold of A. your conusor, which hath graunted your seruices in B. and in C. and the other townes &c. against all men (saning the faith that wee owe vnto our Soueraigne Lord the King, and to his heires, & to our other Lordes) and the one and the other kissed him. And after they made fealty, and the one & the other held their hands together vpon a Booke, & the husband said the words, and both kissed the booke. More shall be said of Fealty in the tenure of Socage, and in the tenure of Frankalmoigne, and in the tenure of Homage auncestrell.

Escuage.

EScuage is called in Latin Scutagium, that is to say, seruice of sheild. And such a tenant that holdeth his land by Escuage, holdeth by knights seruice. And also it is cõmonly said, that some hold by a fee of knights seruice, and some by ꝑ halfe fee of knights seruice &c. And it is said, that when the king maketh a voiage royal into Scotland for to subdue the Scots, hee that holdeth by a fee of knights seruice, behoueth to be with the King by forty dayes, well & conuenably arrayed for the warre. And

likewise hee that holdeth his land by the halfe of a fee by Knights seruice, ought to be with the king by xx. daies. And he that holdeth his land by the fourth part of a fee by Knights seruice, him behoueth to be with the king by ten dayes. and so after the quantitie, hee that hath more, to doe more, and he that hath lesse, to doe lesse.

But it appeareth by the pleas and argu-ments made in a good plee vpon a writ of De-tinue of an Obligation, brought by one Henry Gray, An.7.E.3.fol.29. that it needeth not to him that holdeth by Escuage to go himselfe, if he will find an able person for the warre con-uenable arrayed for the warre, to goe with the king, & that seemeth good reason: for it may be, that he that holdeth by such seruice is sicke, in such wise that he may not goe nor ride.

And also an Abbot, or any other man of Re-ligion, or a woman sole that holdeth by such seruice, ought not in such case to goe in proper person. And Sir William Herle that time chiefe Justice of the common Place said in the said plee, that Escuage shall not be graunted, but where the King himselfe goeth in proper per-son. And so it abode in iudgement of the same plee, if these xl. dayes shall be accompted from the day of the Muster of the kings host made by the commons and the kings commaunde-ment: Or els from the day that the king first entreth into Scotland &c. therefore inquire of this matter.

And after such voyage into Scotland it is commonly said that by the authority of Parliament, the Escuage shalbe set and put in certaine: that is to say, a certaine summe of money how much euery one ỹ holdeth by a whole fee of Knights seruice, which was not in his owne proper person, nor none other for him with the King, shall pay vnto the Lord, of whom he holdeth his land by escuage. As put case that it was ordained by authority of parliamẽt, that euery one that holdeth by a whole fee by Knights seruice, which was not with the King, shall pay to his Lord xl.s. That he that holdeth by the halfe of a fee by a Knights seruice, shall pay vnto his Lord but xx.s. and so who more, more, and who lesse, lesse. And some tenants hold, that if Escuage runne by authority of Parliament to any summe of money, that they shall pay but the halfe of that summe, and some but the fourth part of that summe. But because the Escuage that they shall pay is not certaine, for that it is at no certaine what the Parliament will assesse the Escuage, they hold by Knights seruice. But otherwise it is of Escuage certaine, of which shall be spoken of in the tenure of Socage.

And if a man speake generally of Escuage, it shall be vnderstood by the common speech of Escuage not certaine, which is Knights seruice: And such Escuage draweth vnto him Homage, and Homage draweth vnto him Fealtie, for fealtie is incident to euery manner of

seruice

seruice, but to the tenure of frankalmoigne, as it shalbe said hereafter in the tenure of frankealmoigne: So as he that holdeth by Escuage holdeth by homage, Fealty, and Escuage.

And it is to be vnderstood, that when Escuage is so sessed by authority of Parliament, euery Lord of whom the land is holden by escuage, shall haue the Escuage so sessed by the Parliament, because it is vnderstood by the Law, that at the beginning such tenements were giuen by the Lords to hold by such seruices to defend their Lordes as well as the King, and to set in quiet and rest their Lordes against the King of Scots aforesaid. And for that such tenements came first of the Lordes, it is reason that they haue the escuage of their tenants.

And the Lords in such case may distrayne for the Escuage so assessed, or they may haue the Kings writs, directed vnto the Shiriffes of the Shires, to leuy such Escuage for them, as it appeareth by the Register fol. 88.

But of such tenants that hold of the King by Escuage, which were not with the king in Scotland, the King himselfe shall haue the escuage.

Item in such case aforesaid, where the King maketh a voyage royall into Scotland, and the Escuage is assessed by Parliament, if the Lord distraine his tenant that holdeth of him by seruice of a whole knights fee, for the escuage so assessed &c. and the tenant pleadeth

and

and will auerre that he was with the king in Scotland &c. by xl. dayes, and the Lord will auerre the contrarie, it is said that it shall be tried by the certification of the Marshal o the Kings host in writing vnder his seale, which shall be sent to the Iustices.

Homage, Escuage, and Fealty.

TEnure bb Homage, Escuage, and Fealty, is to hold by knights seruice, and it draweth vnto it ward, mariage, and reliefe: For when such a tenant dieth, his heire male being within the age of xxj. yeeres, the Lord shall haue the land holden of him vnto the age of the heire of one and twenty yeeres, which is called full age, for that such an heire by the vnderstanding of the Law, is not able to do knights seruice before the age of 21 yeeres.

And also if such an heire be not married at the time of the death of his ancestor, then the Lord shall haue the ward and marriage of him. But if such a tenant die his heire female being of the age of foureteene yeeres or more, then the Lord shal not haue the ward neither of the land nor of the bodie, for that a woman of such age may haue a husband able to doe Knights seruice. But if such an heire female be within the age of foureteene yeere and not married at the time of the death of her ancestor, then the Lord shall haue the

ſwarde of the lands holden of him, till the age of ſuch an heire female of 16. yéeres: For that it is giuen by the ſtatute of Weſtm 1. cap. 12. that by two yéeres next following the ſaid 14. yéeres, the Lord may tender a conuenient mariage without diſparaging of ſuch an heire female. And if the Lord do not tender her ſuch mariage within the ſaid two yéeres then ſhée at the end of the ſaid two yéeres may enter and put out the Lord. But if ſuch an heire female be married within the age of 14. yéeres in the life of the auncéſter, and the auncéſter die, ſhe being within the age of 14. yéeres, the Lord ſhall haue but the ward of the land till an end of 14. yéeres of age of ſuch an heire female: And then her huſband and ſhée may enter into the land & put out the Lord, for this is out of the caſe of the ſtatute: Inſomuch that the Lord cannot tender marriage to her that is maried &c. For before the ſaid ſtatute of Weſtm 1. ſuch iſſue female that was within age of 14. yeeres at the time of the death of her auncéſter, and after that ſhée had accompliſhed the age of fourteéne yéeres without any tender of marriage to her by the Lord, ſuch an heire female then might enter into the land, and put out the Lord, as appeareth by the reherſall, and by the wordes of the ſame eſtatute: So that the ſaid Statute was made in ſuch caſe all for the aduauntage of the Lord as it ſéemeth. But yet that at all times it is vnderſtood by the wordes of the

ſame

ſame eſtatute, that the Lord ſhall not haue the two yere after the xiiij. yére, as is afore-ſaid.

And note well, that the full age of the male and female after the common ſpéech is ſaid the age of xxj. And the age of diſcretion is ſaid the age xiiij. yéres, for a childe at ſuch age, which is wedded within ſuch age to a woman may agrée to the mariage or diſagrée.

And if the warden in chiualry marrie once his warde within the age of xiiij. yéres, and after the age of xiiij. yéres he diſagréeth to the marriage. It is ſaid by ſome folke that the childe is not holden by the Law to bée married an other time by his warden, for that the warden had once the mariage of him, and therefore he was out of his ward, as concerning the ward of his bodie. And when he had once the mariage of him, and therefore was out of his ward, he ſhall no more haue the marriage of him. In the ſame maner it is, if the warden marrie him, and the wife die, the childe being within age of xiiij. yéres, or xxj. yéres. And that the childe may diſagrée to ſuch marriage when he commeth to thage of xiiij. yére, it is proued by the wordes of the Statute of Merton cap. 6. that ſaith thus: De dominis qui maritauerint illos quos habent in cuſtodia ſua, villanis, et alijs, ſicut burgenſibus vbi diſparagentur, ſi tales homines fuerint infra xiiij. annos, & talis ætatis quod matrimonio conſentire non poſſint, tunc ſi parentes

rentes illius conquerent, dominus ille amittat cuſtodiam illam vſquè ad ætatem hæredis. Et omne commodũ quod inde receptũ fuerit conuertatur in commodum hæredis infra ætatem exiſtentis, ſecundum diſpoſitionis parentum, propter dedecus impoſitum. Si autem fuerit 14. annorum & vltra quod conſentire poterit, & tali marritagio conſenſerit, nulla ſequatur pœna. And ſo it is proued by the ſame ſtatute that no diſparagement ſhall be, but where that he that hath the ward marieth him within the age of 14. yeares.

Alſo it hath bin a queſtion how theſe words ſhould be vnderſtood: Si parentes conquerantur &c. And it ſeemeth vnto ſome that conſidering the ſtatute of Magna charta cap. 6. that willeth, that hæredes maritentur abſquè diſparagatione &c. vpon which the ſaid ſtatute of Merton vpon this point is grounded, as it ſeemeth, and inſomuch as it was neuer ſeene that any action was brought vpon the ſtatute of Merton for ſuch diſparaging againſt the warden, and if any action may be taken vpon ſuch matter, it ſhall be taken by common preſumption before this time, or at ſome time to be put in vre, that theſe wordes ſhall be vnderſtood in ſuch manner, Si parentes conquerantur, i. Si parentes inter ſe lamentantur, which is as much to ſay, that if the Coſins of ſuch a childe haue cauſe to make lamentation and complaint amongſt them for the ſhame done to their coſin ſo diſparaged.

which

which is in a maner a shame to them all, then may the next cosin to whom the heritage may not discend enter, and put out the Warden in Chivalry. And if he will not, another cosin of the childs may doe it, and he to take the issues and profits vnto the vse of the child, and of that yéeld the child account when he commeth vnto his full age: Or els the child within age may enter himselfe, & put out the Warden &c. Sed Quære de hoc.

Also there are many other kinds of disparagings, which be not specified in the same statute, As if the heire that is in ward bée married vnto one that hath but one foote, or one hand, or els deformed, or lame, or having an horrible disease, or els a great & continuall infirmitie: Or if the heire male be married to a woman past child bearing. And many other causes of disparaging there be, but inquire for them, for it is good matter to learne. And of heires males that bee within age of one and twentie yéeres after the death of their auncesters vnmarried: In such case the Lord shall haue the marriage of such an heire, and haue space and time to tender to him conuenable marriage without disparaging within the same time of 21. yéeres.

And it is to wit, that the heire in such case may chuse if hée will bée marryed or no. But if the Lord which is called Wardeine in Chiualrie, tender a conuenable marryage to such an Heire within the

age

age of xxj. yéres, without disparaging, & the heire refuse, and marry not himselfe within the same age: Then the said Warden shall haue the value of the marriage of such an heire. But if such an heire male marrie himselfe within the age of xxj. yéres, against the will of the warden in chuualrie, then shall the warden haue double the value of the Marriage, by force of the Statute of Merton aforesaid, as in the same Statute is more fully comprised.

And diuers tenants hold of their Lords by knights seruice, & yet they hold not by Escuage, nor pay no Escuage, as they that hold their lands by Castleward: that is to say, to keépe a Tower of a Castle, or a gaole, or some other place by reasonable warning, when their Lords heare tell that enemies will come, or be come into England. And in many other cases a man may hold by knights seruice, and yet he holdeth not by Escuage, nor payeth no Escuage, as shall be said in the tenure of Graund Serieantie. But in all cases where a man holdeth by knights seruice, such seruices draw to the Lord, ward, and Mariage.

And if a tenant that holdeth of his Lord by seruice of an whole knights fée die, his heire being of full age of one and twentie yéres, his heire shal pay vnto the Lord C.s. for a relefe, And he that holdeth by the halfe fée shall pay L. s.

Also if a man hold his land of the Lord by the seruice of two knights fées, then the

heire

heire at full age at the time of the death of his auncester, shall pay to his Lord ten pound for reliefe.

Also if there be graundfather, mother, and sonne, and the mother dieth liuing the father of the sonne, and after the grandfather which held his land by knights seruice dyeth seised, and the land discendeth to the sonne of the mother, as heire to the graundfather, which is within age: In such case the Lord shall haue the ward of the land, but not the warde of the heire: For that none shalbe in ward of his body liuing his father, because the father during his life shal haue the marriage of his heire apparant, and not the Lord. Otherwise it is, if the father bee dead liuing the mother, where the land holden in Chiualrie discendeth to the sonne on the fathers side &c.

Also if a man be seised of land which is holden by knights seruice, and maketh a feoffement in fee to his vse, and dyeth seised of the vse, his heire within age, and no will by him declared, the Lord shall haue a writ of Ward, of the body and the land, like as if the tenant had died seised of the demeine. And if the heire be of full age at the death of his auncester, in such a case he shall pay reliefe, like as if he had been seised of a demeine, and that is by the statute of An. 4. H. 7. cap. 17.

Also there is a warden in right in chiualry, and a warden in deed in chiualry: warden in right in chiualry, is where the Lord because

of his Lordship is seised of the warde of the land, and the heire vt supra. Warden in deed in chiualry, is where the Lord in such case after his seising graunteth by deed, or without deed, the ward of the land, or of the heire, or of both to another man, by force of which graunt the graunteé is in possession, then is the graunteé called wardeine in deed &c.

Tenure in Socage.

TEnure in Socage, is where the tenant holdeth of his Lorde the tenancie by certaine seruice for all manner of seruice, so that the seruice be not knights seruice: As when a man holdeth his land of his Lord by fealtie and certaine rent for all maner of seruice: Or els where a man holdeth his land by homage, fealtie, & certain rent, for all maner of seruices, for homage by it selfe maketh not knights seruice.

Also a man may hold of his Lord onely by fealty, and such tenure is Tenure in Socage, for euery tenure that is not tenure in Chiualrie, is tenure in Socage. And it is said, that the cause wherefore such tenure is said, & hath the name of tenure in Socage, is this: Quia hoc Socag. idem est, quod seruic' Socæ, Et hæc Soca Socę, idem est quod Caruca, s. one Sokt, or one plough land.

And in olde time before the limitation

of time out of mind, great part of the tenants that held of their Lords by Socage, ought to come with their Ploughes euery of the said tenants by certaine dayes in the yeere, to tyze and sow the Lords lands of his owne demaines: But for that such works were done for the fuelode & sustenance of their Lords, they were acquited against their Lord of all maner of seruices. And for this, that such seruice was done with their Ploughes, such tenure was called tenure in Socage. And after that such seruices were chaunged into diuers other maner seruices, by consent of the tenants, and by the desire of their Lords, that is to say, into a yeerely rent &c. But yet the name of Socage abydeth, and in diuers places Tenaunts yet doe such seruice with their Ploughes vnto their Lord, so that all manner of seruices that bee not Tenures in knights seruice, be called Tenures in Socage.

Also if a man hold of his Lord by Escuage certaine, That is to say, in such forme, that when Escuage runneth and is assessed by the Parliament to a more summe, or to a lesse summe, that the tenant shall pay to the Lord but halfe a Marke for escuage, & neither more ne lesse, to how great summe, or little summe that the Escuage runneth, in this case because the escuage is certaine before that any escuage is assessed &c. such tenure is tenure in Socage, and not knights seruice. But where the

ſumme that the tenant ſhall pay for Eſcuage is not certaine, that is to ſay, where it may be that the ſumme that the tenant ſhall pay for eſcuage may be at one time more, and an other ieſſe, after that it is aſſeſſed &c. then ſuch tenure is tenure by knights ſeruice.

Alſo if a man hold his land for to pay certeine rent to his Lord for Caſtlegard, ſuch tenure is tenure in Socage. But where the tenant himſelfe ought by him, or by any other to make caſtleward, ſuch is tenure by knights ſeruice.

Alſo in all caſes where the tenant holdeth of his Lord to pay to him any certaine rent, that rent is called rent ſeruice.

Alſo in ſuch tenures in ſocage, if the tenant haue iſſue and die, his iſſue being within the age of 14. yéres, then the next friend of the heire to whom the heritage may not diſcend ſhal haue the ward of the land, and of the heire vnto the age of the heire of 14. yéres, and ſuch warden is called warden in Socage. For if land diſcend to the heire by the fathers ſide, then the mother, or ſome other nigh Coſin of the mothers ſide ſhall haue the ward. And if land diſcend to the heire by the mothers ſide, then the father or the next friend of the fathers ſide ſhall haue the ward of ſuch landes or tenements. And when the heire commeth to the age of 14. yéres complete, he may enter & put out his warden in Socage, and occupie the land himſelfe if he will. And ſuch warden

So

Socage shall take no issues or profits of such lands or tenements to his owne vse, but only to the vse and profite of the heire, and of that shall yeeld accompt when it pleaseth the heire, after that the heire hath accomplished the age of fourteene yeeres. But such a warden vpon such accompt shall haue allowance, of all his reasonable costes and expences of all things. And if such a warden marrie the heire within age of fourteene yeere, he shall make accompt to the heire, or to his executors of the value of the marriage, though he toke nothing for the value of the marriage, for that it shall be counted his owne folly, that hee would marrie him without taking the value of the mariage, without hee marrie him to such a marriage that is worth in value as much as the marriage of the heire &c. Also if any other man that is not a nigh friend &c. occupie the lands and tenements of the heire as warden in Socage, he shall be compelled to yeeld accompt vnto the heire, aswell as his next friend: for it is no plea for him in a writ of accompt to say that he is not his nigh friend &c. But he shall answere whether he occupyeth the landes or tenementes as warden in Socage or not. But inquire if after that the heire hue accomplished the age of fourteene yeare, and the warden in socage continually occupyeth the land, till the heire commeth to full age of xxi. yeeres: If the heire at his full age shall haue an action of Accompt against the

wardein for the time that he hath occupied after the said foureteene yeeres, as against the wardein in socage, or against him as against his Baylife.

Also if wardein in chiualry make his executors, and dye, the heire being within age &c. The executors shal haue the ward, during the nonage. But if the wardein in Socage make executors and dye, the heire being within the age of foureteene yeeres, his executors shal not haue the warde, but another nigh friend to whom the heritage may not discend, shal haue the warde. And the cause of diuersities, for that the wardein in Chiualry hath the warde to his proper vse, and the wardein in Socage hath not the ward to his owne vse, but to the vse of the heire. And in such case where the wardein in socage dyeth before any such accompt made by him, the heire is at that without remedy, for that no writ of accompt lyeth against the executors, but only for the King.

Also the Lord of whom the land is holden in Socage after the death of his tenant, shall haue reliefe in such forme. If the tenaunt holde by Fealtie, and certaine rent to pay yeerly &c. If the termes of payment be to pay by two termes of the yeere, or by foure termes of the yeere, the Lord shall haue of the heire of his tenaunt, so much as the rent amounteth that her shall pay by yeere. As if the tenaunt held of the

Lord by fealty, and 2. shillinges of rent, payable at certaine termes of the yeere, then the heire shal pay to the Lord 2.s. for relieſe aboue tenne shillings that hee shall pay for the rent. Looke more in the Statute of Anno 19. H. 7. cap. 15.

And in such case after the death of the tenant, such relieſe is due to the Lord incontinent, of what age soeuer the heire be, for that such a Lord may not haue the ward of the bodie nor the land of the heire. And the Lord in such case ought not to abide the paiment of his relieſe, after the termes and dayes of paiment of the rent, but he ought to haue his relieſe incontinent: And therefore hee may incontinent distraine after the death of his tenant for the relieſe.

In the same maner it is, where a tenāt holdeth of his Lord by fealtie, and by a pound of Comin, or a pound of Pepper by the yeere, and the tenant die, the Lord shall haue for his relieſe a pound of Comin, or a pound of Pepper.

In the same manner is it, where the tenant holdeth to pay by the yeere a certaine nūber of Capōs or Hens, or a paire of Gloues, or certaine bushels of wheate, and such other maner things. But in some case the Lord ought to abide to distraine for his relieſe till a certaine time. As if the tenant hold of his Lord by a rose, or by a bushell of roses, to pay at the feast of S. Iohn Baptist. If such a tenant die in winter, then the Lord may not distraine for

his relife &c. vntill the time that the Roles by the course of the yere may haue their growings &c. Et sic de similibus.

Also if any peraduenture will aske why a man may hold of his Lord by fealty only for all maner of seruices, insomuch, that when the tenant shall make his fealty, he shal sweare to his Lord that he shall do all seruices due, & when hee hath made fealty in such case, there is none other seruice due: To this it may be said, that where the tenant holdeth his land of his Lord, it behoueth that he ought to doe to his Lord some maner of seruice, for if the tenant nor his heires ought to doe no maner of seruice to his lord, nor to his heire, thē by long time continued it should be out of remembrāce of whom the land was holden, of the Lord, or of his heire, or not, & then more oft & more sooner will men say, that the land is not holden of the Lord nor of his heires, then otherwise: and vpon this the Lord shall lose his Escheate of his land, or percase other forfaiture or profit that he might haue of the land: So it is reason that the Lord & his heires haue some seruice done vnto him, for a proof, & a witnes that the land is holden of them, and because fealty is incident to all maner tenures, except tenure in Frankalmoigne, as shalbe said in Frankalmoigne, & because that the Lord will not at the beginning of the tenure haue any other seruices but fealty, it is reason that a mā may hold of his Lord only by fealty, and when he hath

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made his fealty, he hath done all his ſeruice.

Alſo if a man let to another for terme of life certaine lands or tenements, without ſpeaking of any thing to yéeld to the leſſor, yet he ſhall doe to the leſſor fealty, for that he holdeth of him. And if a Leaſe be made to a man for terme of yeeres, it is ſaid the leſſée ſhall doe to the leſſor fealty, for that he holdeth of him. And this is prooued well by the words in a writ of waſt, when the leſſor hath cauſe to bring a writ of waſt againſt him, the which writ ſhall ſay, that the leſſée holdeth the tenements of the leſſor for terme of yeeres; ſo that writ prooueth a tenure betweene them &c. But he that is tenant at will after the courſe of the Common Law, ſhall not make fealty, becauſe he hath no maner of a ſure eſtate. But otherwiſe it is of tenant after the cuſtome of the manor, becauſe that he is bound to doe fealty to his Lord for two cauſes: One is, becauſe of cuſtome, the other is, becauſe that he taketh his eſtate in ſuch forme to do fealty.

Franke almoigne.

TEnant in Franke almoigne is, where an Abbot or Prior, or another man of Religion, or of holy Church, holdeth of his Lord in Franke almoigne: that is to ſay in Latin, in liberam Eleemoſynam, that is to ſay, in free almes. And ſuch tenure began firſt in old time when a man in old time was ſeiſed of lands or tenements in his demeſne as of fee, and of

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the same land enfeoffed an Abbot and his co-uent, or Prior and his Couent to haue and to hold to them and their successors in pure and perpetuall almes, or in Frankealmoigne, or by such wordes, to hold of the graunter, or of the lesser and his heires in free almes: In such case the tenements were holden in frankealmoigne. And in the same manner it is, where the landes or tenements were graunted in olde time to a Deane and Chapter, and to their successors, or to a Parson of a Church, and to his successors, or to any other man of holy Church, and to his successours in free almes, if he had capacity to take such grants or feoffements &c. And such as holde in free almes, be bound of right afore God to do Diriges, Prayers, and Masses, and other diuine seruices for the soules of the grantors or feoffors, or for the soules of their heires which be dead, and for the prosperitie & good life of them that be aliue.

And for this they doe at no time no manner of fealtie vnto their Lordes, for that such diuine seruice is better for them before GOD, then any doing of Fealtie. And also their wordes, free almes or frankealmoigne, exclude the lord to haue any worldly or temporall seruice, but only to haue diuine and spirituall seruice to be done for him &c. And if such that hold their tenements in free almes, or frankealmoigne will not, or fayle to doe such Diuine Seruice as is sayd, the Lord may not

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distraine them for the seruices vndone &c. because it is not set in certaine, what seruice they ought to doe: but the Lord may of them complaine to their Ordinary, praying him that hee will set punishment and correction of that: And also to prouide & see that such negligence be no more done: and the Ordinary of right ought to doe that &c.

But where an Abbot or a Prior holdeth of his Lord by certaine diuine seruice in certain to be done, as for to sing a Masse euery friday in the weeke, for the Soules &c. or euery yeere at such a day to sing Placebo & Dirige &c. or to find a Chaplein to sing Masse &c. or to distribute in almes to an hundred poore men, an hundred pence at such a day, in such case if such diuine seruice be not done, the Lord may distraine &c. for that this diuine seruice is in certain by their tenure what the Abbot or the Prior ought to do. And in such case the Lord shall haue fealty &c. as it seemeth.

And such tenure is not said tenure in free almes, but it is said tenure by diuine seruice, for in tenure in free almes, or frankealmoigne, no mention is made of any maner certaine seruice, for none may hold in free almes or frank almoigne if there be expressed any maner certein seruice that he ought to do.

And if it bee demaunded, if the tenant in frankmariage shall doe Fealty to the donour or to his heires before the fourth degree be passed &c. It seemeth that yea, for hee is not like

like as to this intent to a tenant in free almes or franke almoigne, for the tenant in free almes shall do (because of his tenure) diuine seruice for the Lord as it is aforesaid, and that he is charged to do by the law of holy Church, and for that he is excused and discharged of fealty. But tenant in frankemarriage doth not by his tenure such seruice.

And if he do not to his Lord fealty, then he doth not to his Lord any manner of seruice neither spirituall nor temporall, which should be an inconuenience and against reason, that a man should haue estate of inheritance of an other, and yet the Lord shall haue no maner of seruice of him as it seemeth, and so it seemeth that he shall doe fealtie to his Lord vntill the fourth degree be past &c. And when he hath done fealty, he hath done all his seruice. And if an Abbot hold of his Lord in free almes, & the Abbot and his Conuent vnder their common seale alien the same land to a seculer man in fee simple, in this case the seculer man shall do fealty to the Lord, for that he may not hold of his Lord in free almes; for if the Lord ought not to haue of him fealty, then he shall haue of him no maner of seruice which should be an inconuenience where he is Lord, and the tenements are holden of him.

Also if a man grant at this day to an Abbot or to a Prior, lands or tenements in free almes or franke almoigne, these words free almes or franke almoigne hee voyde, for that

it is ordained by the Statute which is called Quia emptores terrarum, which statute was made Anno 18. Regis E. primi, That no man may alien or grant lands or tenements in fee simple to hold of himselfe, so that if a man be seised of certain lands or tenements which he holdeth of his Lord by knights seruice, and at this day he graunteth the same land to an Abbot &c. in free almes, or franke almoigne, the Abbot shall holde immediatly the same tenements by knights seruice of the Lord of his graunter, because of the same statute: so that no man may hold in free almes, or in franke almoigne, but if it be by title of prescription, or by force of a graunt made to some of his predecessors before the same statute. But the king may giue lands or tenements in fee simple to hold in free almes or frankalmoigne, or by other seruice, for he is out of the case of the Statute. And note well, that no man may hold landes or tenements in free almes, but of the graunter or his heires, and that for the priuitie of the gift: and therefore it is said, that if there be Lord, Meine, and tenant, and the tenant is an Abbot that holdeth of his meine in franke almoigne, if the meine die without heire, then the meinalte shall come by escheat to the said Lord aboue, and the Abbot then shall hold of him immediatly onely by fealty, and shal do him fealty, for that he may not hold of him in franke almoigne &c.

And note well, where that such a man of

religion holdeth his lands of his Lord in frée almes &c. his Lord is bound by the Law to acquite him of euery maner of seruice that any Lord aboue him will demaund or aske of the same tenants. And if he acquite him not, but suffer him to bée distrained &c. then he shall haue against his Lord a writ of Meine, & recouer his damages and costes of his suit.

Homage auncestrell.

TEnure by Homage auncestrell is, where a tenant holdeth his land of his Lord by homage, and the same tenant and his auncesters whose heire he is, haue held the same land of the said Lord, and of his auncesters, whose heire the lord is, from time out of mind by homage, & haue done homage vnto him: which is called Homage auncestrel, because of the continuance which hath béen by title of prescription in the tenancy, in the blood of the tenant, & also in the lordship in the blood of the Lord. And such seruice by homage auncestrel draweth to it warranty: if the Lord that is now hath receiued homage of such tenaunt, he ought to warrant his tenant when he is impleaded of the lands holden of him by homage auncestrel. And all such seruice by Homage auncestrell draweth to it acquitance, that is to say, the Lord ought to acquite his tenant against all other Lords aboue him of euery manner of seruice. And it is said, that if such tenant be impleaded by a Præcipe quod red-

eddat &c. and he voucheth his Lord to warrantie, which commeth in by processe, and asketh the tenant what hée hath to binde him to warrantie, and he sheweth how hée and his auncesters, whose heire he is, haue holden the land of the Vouchée and of his auncesters, whose heire he is, by Homage from time out of mind: if the Lord which is vouched receiued none homage of the tenant, nor of anie of his auncestors, the Lord then if hée will, may disclaime in the Lordship, and so put out his tenant of his warrantie. But if the Lorde which is vouched hath receiued homage of the tenant, or of any of his auncestors, then may he not disclaime, but he is bound by the law to warrant the tenant, & then if the tenant leese the land in default of the vouchée, he shall recouer in value against the vouchée of the landes or tenements that the vouchée had at the time of the voucher, or at any time after.

And it is to wit, that in euery case where the Lord may disclaime in his lordship by the law, in Court of Record, and of that will disclaime, his seigniorie is extinct, and the tenant shal hold of the lord next aboue his lord which disclaimeth. But if an Abbot or Prior be vouched by force of Homage auncestrell &c. though hee haue neuer taken Homage &c. yet he cannot disclaime in this case, nor in none other case, for they cannot deuest that thing in fée, which hath béene vested in their house, Paschæ 10. E. 4.

Also

Also if a man that holdeth his land by Ho
mage auncestrel alieneth his land to anothe
in fee, the alienée shall do homage to his Lor
But hee holdeth not of his Lord by homag
auncestrel, for that the tenancy was not con
nued in the blood of the auncestors of the ali
nee, nor the alienée shall neuer haue the ser
rantie of his land of his Lord, for that the co
tinuance of the tenancy in the tenant e in h
blood by the alienation is discontinued. Al
so see, that if the tenant that holdeth his la
by Homage auncestrel of the Lord, and la
a tenant alieneth in fee, though that hee ta
estate of the alienée againe in fee, hee holde
the land by Homage, but not by Homage an
estrell.

Also it is said, that if a man hold his la
of his Lord by homage and fealty, e hee ha
made homage and fealty to his Lord, and t
Lord hath issue a Sonne and dyeth, and t
Lordship discendeth to his sonne: In this ca
the tenaunt which did Homage to the fathe
shall not doe Homage to his sonne, for th
when a tenant hath made once homage to h
Lord, hee is excused for terme of his lif
make homage to any other heire of the Lor
But yet he shall doe fealty to the sonne e he
of his Lord, though that he made fealtie to h
father.

Also if the Lord after the homage to h
made by his tenant, graunt the seruice of h
tenaunt by deed vnto another in fee, and h

nant attorneth &c. the tenaunt shall not bee ompelled to do homage, but he shall do fealty, ough hée did fealty before to the grauntor, Fealtie is incident to euery attornement hen the Lordship is graunted. But if a man seised of a Mannor, and another man holeth his land of him as of ꝑ Manor aforesaid homage, the which hath done homage to his ord which is seised of the manor, if after that stranger bring a præcipe quod reddat ainst the Lord of the manor, and recouereth manour against him, and sueth execution . in this case the tenant shall once againe do mage to him that recouereth the manor, for at the estate of him which receiued homage fore is defeated by the recouery. And it shall t lie in the mouth of the tenant to falsifie or feate the recouery wich was against his ord. And so sée the diuersitie in this case, here a man commeth to his Lordship by recouery, and where hé commeth by discent, or ant of the seignior ie.

And if a man tenant which ought by his tenure to doe Homage to his Lord, come to his ord and say to him, Sir, I owe to doe vnto u homage for the tenements that I hold of , and I am ready to do you homage for the ne tenemẽts, for the which I pray you that will now receiue it, and if the Lord then use to receiue it, then after such refusall the ord may not distraine the tenant for the homage, before that the Lord require the tenant

to do homage, and the tenant refuse to doe it.

Also a man may hold his land by Homage auncestrel, & by Escuage, or by other Knights seruice, as well as hee might hold his land by Homage auncestrel in Socage.

Graund Serieanty.

TEnant by Graund Serieanty is, where a man holdeth his lands or tenements of our soueraigne Lord ye King, by the seruice which he ought to do in his owne proper person, as to beare the kings Banner, or his Speare, or to lead his host, or to be his Marshal, or to beare his sword before him at his Coronation, or to be his Sewer at his Coronation, or his Caruer, or Butler, or to be one of his Chamberlaines of his receit of his Exchequer, or to do such seruices &c. And the cause wherfore such seruice is called Graund Serieantie, is for that it is more honorable, & worshipfull, and digne, then is the seruice of the tenure by Escuage, for he that holdeth by Escuage, is not limitted by his tenure to doe any more especiall seruice, then any other that holdeth by Escuage ought to doe. But hee that holdeth by Graund Serieanty, ought to doe some especiall seruice to the King, that he that holdeth by Escuage ought not to doe.

Also if the tenant which holdeth by Escuage die, his heire being of full age, if he held by a knights fee, the heire shal pay but an C s. for his

his reliefe, as it is ordained by the statute of Magna char. cap. 2. But he that holdeth of the king by Graund serieanty, and dieth his heire being of full age, shal pay vnto the king for his reliefe, the value of his lands or tenements by the peere, besides the charges & reprises, which he holdeth of the king by Graund serieantie. And it is to wit, that Serieanty in Latin is seruitium, and of Magna serieantia, is Magnum seruitium, that is to say, a great seruice.

Also those which hold by Escuage ought to do their seruice out of the realme, but they that hold by Graund serieanty for the most part ought to do their seruice within the Realme.

And it is said, that in the Marches of Scotland some hold of the King by Cornage, that is to say, to blowe an horne for to warne the men of the Countrey &c. when they heare that the Scots or other enemies wil come to enter into England &c. which seruice is Graund Serieanty &c. But if any tenant hold of any other Lord then of the King by such seruice of Cornage, that is not Graund serieanty, but it is Knights seruice, and draweth to it warde, mariage, and reliefe, for none may holde by Graund serieanty, but of the King onely.

Also a man may see in the 11. peere of Henry the 4. fol. 27. that Cokein then being chiefe Baron of the Eschequer came into the cõmon Place, bringing with him a copie of a Record in these wordes, Talis tenet tantam terram de domino Rege per Serieantiam, ad inueniẽdum

vnum hominem ad guerram infra quatuor maris &c. that is to say, such a man holdeth so much land of our soueraigne Lord the King by serieantie, to finde one man appointed for the warre within the sower Seas, and he demaunded whether it was Graund serieanty or Petie serieantie, and Hank. then said, that it was Graund sericanty, for that it was seruice to be done by the body of a man, & if that he may not finde a man to doe seruice for him, he must doe it himselfe: To whom the other Justices assented. Cokaine then said, the tenant in this case shal pay relefe to the value of the land by yeere, to the which was none answere. And note, that all they that hold of the king by Graund serieanty, hold of the king by knights seruice, & the king of that shall haue ward, mariage, & relefe, but the king shall not haue of them Escuage, if they hold not by Escuage.

Petie Serieantie.

TEnant by Petit Serieantie is, where a man holdeth his land of our Soueraigne Lord the King, to yeeld vnto him yeerely a Bowe, a Swoorde, a Dagger, or a Knife, or a spere, or a paire of gloues of maile, or a paire of spurs gilt, or an arrow, or diuers arrowes, or to yeeld such other small things touching the warre, and such seruice is but Socage in effect, for that that the tenant by his tenure ought not to goe, nor to doe any thing in his owne

owne proper person touching the warre. But to yéeld and pay yéerely certaine things vnto the King, as a man ought to pay a rent.

And note, that no man holdeth land by Graund serieantie, nor by Petie serieantie, but of the King.

Burgage.

TEnure in Burgage is where an auncient Borough is, of the which the king is lord, and they that haue tenements within the borough hold of the King their tenements, that euery tenant for his tenement ought to pay to the king a certeine rent by yeere &c. And such tenure is but tenure in Socage. And the same maner is where an other Lord spirituall or temporall is Lord of such a Borough, and the tenants of the tenements in such a Borough hold of their Lord to pay each of them yéerely an annuel rent, and it is called tenure in burgage, for that the tenements within the Borough be holden of the Lord of the Borough by certaine rent &c. And it is to wit, that the auncient Townes called Boroughes, be the most auncient & eldest Townes that be within England, for the Townes that now be Cities or Counties, in olde time were Boroughes, & called Boroughes, for of such old townes called Boroughes, came the Burgesses of the Parliament, to the parliament when the king hath summoned his parliamēt.

Also for the greater part, such Boroughes haue diuers customes and vsages which be not had in other townes, for some Boroughes haue such a custome, that if a man haue issue many sonnes and dyeth, the yongest sonne shal inherite all the tenements which were his fathers within the same Borough as heire vnto his father, by force of the custome, the which is called Borough English.

Also in some Boroughes by the custome, the wife shall haue for her Dower all the tenements which were her husbands.

Also in some Borough by the custome, a man may deuise by his Testament his landes & tenements which he hath in fee simple within the same Borough at the time of his death, and by force of such deuise, he to whom such deuise is made after the death of the Deuisor, may enter into the tenements to him deuised, to haue and to hold to him after the forme and effect of the deuise without any liuerie of seisin thereof to be made to him.

Also though a man may not graunt nor giue his tenements to his wife during the couerture, for that that his wife and he be but one person in the Law, yet by such custome he may deuise by his Testament his tenements to his wife, to haue and to hold to her in fee simple, or in fee taile, or for terme of life, or yéres, for that such deuise taketh no effect, but after the death of the deuisor. And if a man at diuers times make diuers Testaments, and

diuers

diuers deuises &c. yet the last deuise and will made by him, shall stand and abide.

Also by such custome a man may deuise by his Testament, that his executors may alien and sell the tenements that he hath in fee simple, for a certaine summe, to distribute for his almes: in this case though the deuisor die seised of the tenements, and the tenements discend vnto his heire, yet the executors after the death of the testatour may sell the tenements so deuised, and put out the heire, and thereof make a feoffement, alienation, & estate by deed, or without deed, to them to whom the sale is made vnto.

And so may yee see a case, where a man may make a lawfull estate, and yet he hath nought in the tenemẽts at the time of the estate made: And the cause is for that, that the custome and vsage is such, Quia consuetudo ex certa causa rationabili vsitat̃, probat communem Legem: For a custome vsed vpon a certaine reasonable cause, proueth the Common Law.

And note well, no custome is to be allowed, but such custome as hath beene vsed by title of prescription, that is to say, from time whereof is no mind. But diuers opinions haue been of time out of mind, and of title of prescription, which is all one in the law, for some men haue said, that the time of minde should be said for time of limitation in a writ of Right, that is to say, from the time of king Richard the first after the Conquest, as is giuen by the statute of

Westminster the first, for that a writ of Right is the most highest writ in his nature that may be. And in such a writ a man may recouer his right of the possession of his auncesters, of the most auncient time that any man may by any writ by the law. And in so much that it is giuen by the said estatute, that in such a writ none shall be heard to aske of the seisin of his auncestors of more longer time, then of the time of King Richard aforesaide, therefore this is prowed, that continuance of possession, or other customes and vsages vsed after the same time is title of prescription, and this is certaine. And other haue said, that well and trueth it is, that seysin and continuance after the limitation &c. is a title of prescription, as is a foresayd, and by the cause aforesaid. But they haue said that there is also another title of prescription that was at the Common law, before any estatute of limitation of writs &c. and that it was where a Custome or vsage, or other thing had been vsed, for time whereof mind of man runneth not to the contrarie: And they haue said that this is prowed by the pleading, where a man will pleade a title of prescription of custome &c. he shall say that such custome hath beene vsed from time whereof the memory of men runneth not to the contrary, that is as much to say, when such a matter is pleded, that no man then aliue hath heard one prowe to the contrary nor hath no knowledge to the contrary, & in so much that

such

such title of prescription was at the Common Law, and not put out by any estatute, Ergo it abideth as it was at the Common law, and the sooner, insomuch that the said limitation of a writ of Right &c. is of so long time passed. Ideo quære de hoc. And many other customes and vsages haue such ancient boroughs.

Also euery Borough is a Towne, but not the contrary. More shalbe said of Customes in the tenure of Villenage.

Villenage.

TEnure in villenage is most properly when a Villeine holdeth of his Lord (to whom he is villein) certaine lands & tenements after the custome of the Mannor, or els at the will of his lord, & to doe his lord villein seruice, as to beare, bring, and carry out the dung & filth of the Lord vnto the land of the lord, there to lay it, cast it, & spred it abroad vpon the land, and to doe such other manner of seruice. And some free tenants hold their tenements after the custome of certain manors by such seruice, and their tenure is called tenure in villenage, and yet they be no villeines, for no land holden by villenage, or villeine lands, or any custome rising of the land, shall euer make a free man villein: But a villeine may make free land to be villein land vnto his Lord. As if a villeine purchase land in fee simple, or in fee taile, the lord of the villeine may enter into the land, and put out the villeine & heires for euer,

euer, & after the Lord (if hée will) may let the same land to the villeine, to hold in villenage.

Also if a frokfeuement be made to a certaine person or persons in fée, to the vse of a villeine, or if a villeine, or any other persons be infeoffed to the vse of a villeine, what estate soeuer the villein hath in the vse, in fée taile, for terme of life, or yéeres, the Lord of the villeine may enter in all those landes and tenements, likewise as if the villeine had béen alone seised of the demesne: And that is by the Statute of An. 19. H. 7. cap. 15. But if a fréeman will take any lands or tenements of his Lord by such villeine seruice, that is to say, to pay a fine to his Lord for his marriage, or for the marriage of his sonne, or his daughter, then shall he pay such a fine for the marriage &c. for that it is the folly of such a fréeman, to take in such forme landes or tenements to hold of his Lord by such bondage, yet that maketh not the fréeman villeine.

Also, euery villeine, eyther he is villeine by prescription, that is to say, hée and his auncesters haue béen villeines time out of minde, or he is villeine by his owne confession in Court of Record. But if a fréeman haue diuers issues, and after confesseth himselfe to be villein to an other in Court of Record, yet his issues which he hath before the confession be frée, but the issues which hée shall haue after the confession &c. shall be villeines.

Also if a villeine purchase lands and alie-

neth

neth the same lands to an other before his lord enter, then the Lord may not enter, for it shall be iudged his owne folly that he entred not when the land was in the villeines handes. And so it is of his other goods, for if the villeine buy and sell, or giue goods to an other before that the Lord seise the goods, then the lord may not seise them: But if the Lord before any such sale or gift commeth within the house of the villein where such goods be, & there openly among the neighbors claime the same goods to be his, and so seise parcell of the same in name of seisin of all his goods &c. this is said a good seisin in the law. And the occupation that the villein hath after such claime in the goods, shal be taken in the Law, the right of the Lord. But if the King haue any villeine that purchaseth lands, & alieneth before that the King enter, yet the King may enter in the land in whose hands soeuer the land commeth: Or if the villein buy or sell diuers goods before that the King seise the goodes, yet the King may seise them in whose hands soeuer they be, Quia nullum tempus occurrit Regi, for no time runneth against the King.

Also if a man let land to an other for terme of life, sauing the reuersion to him, and a villeine purchaseth of the lessour the reuersion, in this case it semeth that the Lord of the villeine may incontinent come to the land, and claime the same reuersion as Lord of the same Villeine, and by this claime,

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the reuersion is incontinent in him, for in any other forme he may not come to the reuersion, for he may not enter vpon the tenant for terme of life: and if he ought to auoide till after the death of the tenant for terme of life, then happely he might come too late, for parauenture the villeine will graunt or alien to an other in the life of the tenant for terme of life. In the same maner it is where a villeine purchaseth the aduowson of a Church full of an incumbent, that the Lord of the villeine may come to the said Church and claime the aduowson. And by this claime the aduowson is in him, for if he abide till after the death of the incumbent, and then present his Clerke to the said Church: Then in the meane time the villeine might alien the Aduowson &c. and so put out the Lord from his presentation.

Also there is a villeine regardant and a villeine in grosse. Villeine regardant is as if a man be seised of a Manour, to which a villein is regardant, and he that is seised of the said Manour, or they whose estate he hath in the same Manour haue bin seised of the said villeine and of his auncesters as villeins regardant to the Manour from time out of minde. And villeine in grosse is where a man is seised of a Manour, to the which a villeine is regardant, & graunteth the same villeine by his deede vnto an other, then he is villeine in grosse, and not regardant.

Also if a man and his auncestors haue

heire

heire he is, haue bée seised of a Villeine and of his auncestors, as villeines in grosse time out of minde, such bée villeines in grosse. And note well, that of such thinges which may not bée graunted nor aliened wythout déede or fine, a man that will haue such things by prescription may not otherwise prescribe but in him, and his auncestors whose heyre he is, and not by these wordes, in him and whose estate he hath, for that, that hée may not haue their estate without déede or writing, the which behoueth to be shewed to the Court, if he will haue any aduantage of this, and because that the graunt and the alienation of a villeine lyeth not without déede or other writing: A man may not prescribe in a villeine in grosse without shewing of writing, but in himselfe that claymeth the Villeine, and in his auncestors whose heire he is. But of those thinges which bée regardant or appendant to a Manour, or to other landes or tenements, a man may prescribe that hee and they whose estate hée hath were seised of the Manour of such landes or tenementes as regardants or appendants to the Mannour, or to such landes or tenements &c. from time out of minde: and the cause is for this, that such a Mannour, landes and tenements may passe by alienation wythout déede &c. And it is to wit, that nothing is named regardant to a Mannour but a villeine. But certaine other things, as Aduowsons and

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Common of pasture &c. be named appendants to the Mannour, or to other landes and tenements.

Also if a man in Court of Record knowledge himselfe to be villeine that neuer was villeine before, such one is villeine in grosse.

Also, a man that is villeine is called villeine, and a woman that is villeine is called Niefe. And a man that is outlawed is called an Outlaw, and a woman that is outlawed is called a waife.

Also if a villeine take a free woman to wife, the issue betweene them shall be villeine. But if a Niefe take a free man to husband, their issue shall be free. And that is contrarie to the Law Ciuill, for there is said, that partus sequitur ventrem.

Also no Bastard may be villeine, but if that he will knowledge himselfe to be a villeine in Court of Record, for hee is in the Law, quasi nullius filius, as the sonne of no man, for that hee may be inheritour to no man.

Also euery villeine is able and free to sue all maner of actions against euery person, except against his Lord to whom he is villeine: and yet in certaine thinges he may haue against his Lord an action, as of Appeal for the death of his father, or of his other auncestors whose heire hee is. Also a niefe which is rauished by her Lord may haue appeal of Rape against him.

Also if a villeine be made Executor to an other, and the Lord of the villeine was indebted to the testator in a certaine summe of money, the which is not payed: In this case the villeine as executor to the testator, shall haue an action of Det against his Lord, because hée shall not recouer the debt to his proper vse, but to the vse of the testator.

Also the Lord may not take out of the possession of such a villeine, that is Executor, the deads goods, and if he doe, the villeine as Executor shall haue an action of Trespas against his Lord for the same goods so taken, and recouer damages to the vse of the testator. But in all these cases it behoueth the Lord (which is defendant in such actions) to make protestation that the plaintife is his villein, or else the villeine shall be infranchised, though the matter be found for the Lord against the villeine, as it is said.

Also if a villeine sue an action of Trespas, or other action against his Lord in one shire, and the Lord sayth, that hée shall not be answered, for that hée is villeine regardant to his Mannour in an other Shire, and the plaintife sayth, that hée is franke and of frée estate, and no villeine, this shall be tryed in the Shire where the plaintife hath conceiued his action, and not in the Shire where the Mannour is, and this is in fauour of libertie, as it is adiudged Mich. 40. Edward the third.

And

And for this cause was made a statute in the ninth yeere of Richard the second, the tenor of which ensueth in such forme.

Also for that, where many Villeines and Nieces, as well of great Lordes as of other folke spirituall & temporall, flie and goe into Cities and places franchised, as the Citie of London, and other like places, and faine diuers suites against their Lords, because they would make themselues to be infranchised, it is accorded and assented that the Lordes, nor none other shalbe forebarred of their villeines, because of their aunswer in the law. By force of which Statute, if any villeine will sue any maner of action to his owne vse in any Shire where it is hard to trie &c. against his Lord, his Lord may chuse to plead that the plaintife is his villeine, or to make protestation that he is his villein, and to pleade another matter in barre, & if they bee at issue, & the issue bee found for the Lorde, then the villeine, is villeine as hee was before, by force of the same Statute. But if the issue be found for the villeine, then is the villaine franke & free, for that the Lord tooke not for his plee, that the villain was his villaine, but tooke it by protestation

Also the Lorde may not Mayme his villaine, for if he Mayme his villaine, he shall of that be indicted at the Kings suit. And if he be of that attainted, he shal for that make grieuous fine and ransome to the King. But it seemeth that the villaine shall not haue by the

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law any appeal of Maime against his Lord, for in appeale of Mayme a man shall not recouer but his damages. And if the villeine in that case recouer damages against his Lorde, and hath thereof execution, the Lord may take that that the Villeine hath in execution from the Villeine, and so the recouerie standeth voide.

Also if the villeine be demandant in an action reall, or plaintife in an action personall against his Lord, if the Lord will plead in disability of his person, hee may not make plaine defence, but he shall defend but the wrong and the force, and demaund iudgement if hee shall be answered, and shew his matter by and by how he is villeine, and demaund iudgement if he shall be answered.

Also, fiue manner of men there be against whom if they sue actions &c. iudgement may be asked if they shall be answered: One is, where the villeine sueth an action &c. against his Lord, as in case aforesaid. The second is, when a man is outlawed vpon an actiō of Det or Trespas, or vpon any other action or Inditement, the tenant, or the defendant may shew all the matter of the recorde and the outlawrie, and demaund iudgement if hee shall be answered, because that he is out of the law to sue any action during the time that he is outlawed. The third is, where an alien borne out of the allegance of our soueraigne Lord the King, if such alien sue any action reall or per-

perſonall, the tenant or defendāt may ſay, that he was borne out of the kings allegeance, and aſke iudgement if he ſhall be anſwered. The fourth is, where a man by iudgement given againſt him vpon a writ of Præmunire facias, &c. is out of the kings protection, if he ſue any action, & the tenant or defendant ſhew all the Record againſt him, he may aſke iudgement if hee ſhall be anſwered, for the law & the kings writs be the things by which a man is protected and holpen, and ſo during the time that a man in ſuch caſe is out of the kings protection, he is out of helpe and protection by the kings law, or by the kings writ. The fifth is, where a man is entred and profeſſed into Religion, if ſuch a perſon ſue an action, the tenant or defendant may ſhew that ſuch a one is entred into Religion in ſuch a place, into the order of Saint Benet, and is there a Monke profeſſed, or in the order of Friers Minors or Preachers, and is there a Frier profeſſed, and ſo of other orders of religion &c. and aſke iudgement if he ſhalbe anſwered, &c. the cauſe is this, that when a man entreth into Religion, and is profeſſed, hee is dead in the Law, and his ſonne or next colin incontinent ſhall inherite him, as well as though hee were dead indeed, & when hee entreth into Religion he may make his Teſtament & his executors, and they may haue an action of det due to him before his entrie into religion, or any other action that executors may haue, if he were

in deed. And if he make none executors when he entreth into Religion, then the Ordinary may commit the administration of his goods to other, as if he were dead in deede. The first is; where a man is accursed by the Law of holy Church, & he sueth an action reall or personall, the tenant or defendant may plead that he that sueth is accursed, & of this it behoueth him to shew the Bishops letters vnder his seale, witnessing the accursing, and aske iudgement if he shal be answered &c. but in this case if the demaundant or plaintife cannot deny it, the writ shal not abate, but the iudgement shal be, that the tenant or defendant shall goe quite without day, for this, that when the demaundant or plaintife hath purchased his letters of absolution, and shewed them to the Court, he may haue a Resummons or a Reattachment vpon his original, after the nature of his writ &c. But in the other cases the writ shall abate &c. if the matter shewed may not be gainsaid.

Also if a villeine be made a secular Priest, yet his Lord may seise him as his villeine, and seise his goodes &c. But it seemeth, that if the villeine enter into religion and is professed &c. that the Lord may not take him, nor seise him, or that he is dead in the Law. And no more when if a free man take a Niefe to his wife, the Lord may not take nor seise the wife of the husband: But his remedy is to haue an action against the husband, for that hee tooke his niefe to wife without his will,

and so may the lord haue an action against the
Soueraigne of the house that taketh & admit-
teth his villein to be professed in the same house
without licence and will of his Lord &c. and
shall recouer his damnages to the value of the
villeine, for he that is professed Monke &c. shall
be a Monke. & as a Monke shall be taken for
terme of his life naturall, except he be dereig-
ned by the Lawe of the holy Church, and he is
holden by his religion to keepe his cloister, and
if the Lord may take him out of the house, then
he should not liue as a dead person, nor also
his religion, which should be inconuenient &c.
For if there be warden in Chiualrie of lands
and lands of a childe within age, if the child
when he commeth to the age of xiiij yere entreth
into Religion & is professed, the warden hath
none other remedy, as to the ward of the body
but a writ of Rauishment of warde against
the Soueraigne of the house. And if any hold-
ing of full age, that is cosin and heire vnto the
childe enter into the land, the warden hath no
remedy as to the warde of the land, because
that the entrie of the heire of the childe is law-
full in such case.

Also in many other cases the Lord may
make manumission and infranchising to his
villeine. Manumission is properly when the
Lord maketh his deed to his villein to infran-
chise him by this word Manumittere, which
is as much to say, as extra manum, & extra
potestatem alterius ponere, as to put him out

f the hands and the power of an other. And
or this that by such a deede the villeine is put
ut of the hand and power of his Lord, it is
alled Manumission. And so every maner of
nfranchising made to a villeine, may be said a
anumission. Also if the Lord make to his
illeine an Obligation for a certaine summe
f money, or graunt vnto him by his deede an
nnuitie, or let him by his deede, lands or tene-
ents for terme of yeeres, the villeine is in-
anchised. And if the Lord make a feoffe-
ent to his villeine of any landes or tene-
ents by deede, or without deede, in fee sim-
le, or fee taile, or for terme of yeeres, and deli-
reth vnto him the seisin, this is an infran-
ising: But if the Lord make to him a lease
f lands or tenements, to hold at the will of
e Lord, by deede, or without deede, this is
infranchising, for that he hath no maner of
rtaintie nor surety of his estate, but that the
ord may put him out when hee will. Also
Lord sue against his villeine a Præcipe
od reddat, if hee recouer, or be nonsuit after
parance, this is manumission, for this that
e may lawfully enter into the land without
h suit. In the same manner it is if hee sue
ainst his villeine an action of Dette, or of
compt, or of Couenant, or of Trespas, or
h other, this is an infranchising &c. for
that he may imprison his villeine, & take
goods without such suit. But if the Lord
his villeine by appeal of Felony, this is

none infranchising to the villeine, though the matter of the appeal is found against the lord, because that the lord may not haue the villein hanged without such sute. But if the villein were not indicted of the same felony before the appeal sued against him, and is acquited of the felony, so that he recouer damages against the lord for the false appeal: Then in this case the villein is infranchised, because of the iudgement of damages that was giuen to him against his Lord. And more cases & matters there be by which a villeine may be infranchised against his Lord, Sed de illis quere. Also if a Lord of a Manor will prescribe that it hath bin accustomed within his manor, time out of mind, that euery tenant within the same Manor that matrieth his daughter to any man without licence of the Lord of the manor shall make fine to the Lord for the time being, this prescription is void, for none ought to make such fine but onely villeines, for euery free man may freely marry his daughter to whom it pleaseth him and his daughter. And because that this prescription is against reason, such prescription is void. But in the shire of Kent of ancient holden in Gauelkind, where by the custome vsed time out of mind, the children male shall be enemy to inherite, this custome is allowed for this that it is with some reason, because that euery Sonne is as great a Gentleman as the elder sonne, and because of that euery great honour and valure shall growe, the

if he had nothing by his auncestors, where peraduenture he might not so grow &c.

Also, where by the custome called Borough English, in some Borough the yongest sonne shal inherite all the tenements &c. this custome also standeth with reason, because that the yonger sonne if he lacke father and mother, (because of his yong age) may least of all his brethen help himselfe &c. But if a man will prescribe, that if any cattel were vpō the demeans of his manor, there doing damage, that ỹ Lord of the mannor for the time being hath vsed to distraine them, & the distres to retaine till fine were made to him for the damages at his will, his prescription is voyd, because it is against reason, that if wrong be done any man, that he thereof should be his owne Iudge, for by such pay if he had damages but to the value of an halfepenie, he might assesse & haue therefore an £li. which should be against all reason. And such prescription, or any other prescription vsed, if it be against all reason, this ought not, or will not be allowed before Iudges, Quia malus vsus abolendus est.

Rents.

THere maner of Rents there be, that is to say, Rent seruice, Rent charge, and Rent secke. Rent seruice is, where a man holdeth his land of his Lord by fealty & certaine rent, and by other seruice, and certaine rent, or by homage, fealtie, and certaine rent, and if rent

ſeruice at any day that it ought to be payed, be
behinde, the Lord may diſtraine for that
common right. And if a man now will giue
lands or tenements to an other in the tayle,
yeelding to him certaine rent by the yeare, he
common right may diſtraine for the rent be-
hinde, though that ſuch gift was made with-
out deede, becauſe that ſuch rent is rent ſer-
uice: But in ſuch caſe where a man vpon
a gift, or leaſe, will reſerue to him rent ſeruice,
it behoueth that the reuerſion of the lands
tenements be in the donor, or in the lellor:
if a man will make a feoffement in fee, to
giue lands in the tayle, the remainder
in fee ſimple, without a deede, reſeruing
him certaine rent, ſuch reſeruing is void,
cauſe that no reuerſion is in the Donor,
ſuch a tenant holdeth his land immediately
the Lord of whom his donor held. And
is by force of the ſtatute of Weſtminſter
cap. 1. Quia emptores terrarum, For
the ſame eſtatute, if one made a feoffement
fee ſimple by deed, or without deed, reſer-
him, or to his heires certaine rent, this
rent ſeruice, and for this he might diſtrain
common right: And if he made no reſerua-
of any rent, nor of any ſeruice, yet the
held of the feoffor by ſuch ſeruice, as the
for held ouer of his Lord next aboue.
a man by deed indented at this day, make
a gift in the taile, the remainder ouer
fee, or feoffement in fee, and by the ſame

denture reserueth to him and to his heires a certaine rent, and that if the rent be behind, that it shal be lawfull to him and to his heires to distraine &c. such rent is rent charge, because such lands and tenements be charged of such distresse by force of the writing only, and not of common right. And if such a man in such a deed indented, reserue to him and to his heires certaine rent, without any such clause set or put in the deed, that he may distraine &c. that such rent is rent secke, because that he cannot distraine to haue the rent if it be denied by the same distresse, and if he were neuer seised in this case of the rent, he is without remedie, as it shall be said hereafter.

Also if a man seised of certaine land, graunt by his deed Poll, or by Indēture, a yerely rent issuing out of the same land to an other in fee simple, or in fee taile, or for terme of life &c. with clause of distresse &c. then that is rent charge, and if it be without clause of distresse, then it is rent secke. And note well, that rent secke, Idem est quod redditus siccus, because that no distresse is incident to it.

Also if a man grant by his deed rent charge to an other, & the rent is behinde, the graūtee may chuse if he will sue a writ of annuitie of it against the grantor, or distraine for the rent behind, and the distresse to withhold till he be of that paied: But he may not doe & haue both together, for if he take a writ of annuitie, then the land is discharged, and if he sue not a writ of

of annuitie, but distraine for the arrerages, and the tenant saeth a Replegiare &c. and the grantée answeth the taking of the distresse in the land &c. in Court of Record, then is the land charged, and the person of the grantor discharged of an action of Annuitie.

Also, if a man will that another shall have a rent charge issuing out of his landes, but he will not that his person shal be charged in any manner by a writ of Annuitie, then he may haue such clause in the end of his deed, Proviso semper quod presens scriptum, nec aliquid in eo specificatum, non aliqualiter se extendat ad onerandum personam meam per breue de Annuali redditu, Sed tantummodo ad onerandum terram & tenementa predicta, de annuali redditu predict', and then is the land charged, and the person of the graunter discharged.

Also, if a man make such a deed in such manner, that if A. of B. be not yerely paid at the Feast of Christmasse for terme of life xx. s. of lawful mony, that then it shalbe lawfull to the said A. of B. to distraine for it in the manor of F. &c. this is a good rent charge, because that the manor is charged of the rent by way of distresse: and yet the person himselfe that made such a deed is discharged in this case of an action of annuity, because that he graunted not by his deed any annuity to the said A. of B. but grãted only ỹ he may distrain for his annuity.

Also, if a man haue a rent charge to him and to his heires issuing out of certaine lands

if he purchase any parcell of the land to him and to his heires, all the rent is extinct and annulled, because that rent charge may not in such maner be apportioned: but if a man that hath rent seruice purchase parcell of the land whereof the rent is, this shall not extinct all, but for the portion, for that rent seruice in such case may be apportioned, and shall be apportioned after the value of the land: But if a tenaunt hold his land by seruice to yeeld to his Lord yerely at such a feast an Horse, or an Hauke, or such thing semblable, if in such case the Lord purchase parcell of the land, the seruice is gone, because that such seruice may not be seuered nor apportioned. But if a man hold his land of an other by homage, fealtie, and escuage, and by certaine rent, if the Lord purchase parcell of the land &c. in that the rent shall be apportioned, as is aforesaid, but yet in this case the homage and fealty abideth whole to the Lord, for the Lord shall haue the homage and fealtie of his tenant for the remnant of landes and tenements holden of him as hee had before &c. for this that such seruices be no annuell seruices, and may not be apportioned: But the Escuage may and shall be apportioned after the quantitie and rate of the land.

Also if a man haue a rent charge, and his father purchaseth parcell of the tenements charged in the fee, and dyeth, & that parcell discendeth to his son that hath the rent charge, now this

this rent charge shall be appoꝛcioned after the value of the land, as is afoꝛesaid of rent seruice, because that such a poꝛcion of the land purchased by the father, commeth not to the sonne by his owne dæde, but by diſcent and course of the Law.

Also if there be Loꝛd and tenant, and the tenant holdeth of his Loꝛd by fealty and certeine rent, and the Loꝛd grauntath the rent by his dæde to an other &c. reseruing to him the fealtie, and the tenant attourneth to the grantee of the rent, now such rent is rent secke to the grantee, foꝛ this that the tenements be not holden of the grauntee of the rent, but be holden of the Loꝛd that reserued to him fealtie. And in the same maner it is where a man holdeth his land by homage, fealtie, and certeine rent, if the Loꝛd grant the rent, sauing to him the homage, such rent after such grant is rent secke. But where lands oꝛ tenements be holden by homage, fealtie, and certeine rent, if the Loꝛd will graunt the homage of his land by his dæd to an other, sauing to him the remnant of the seruices, and the tenant attourneth to him after the foꝛme of the graunt, now in this case the tenant holdeth his land of the grantee: and the Loꝛd that grauntath the homage, shall not haue but the rent as rent secke, and shall neuer diſtraine foꝛ the rent: foꝛ that, that neither homage, noꝛ fealtie, noꝛ escuage, may be said secke, foꝛ he that hath oꝛ ought to haue of his tenant homage, oꝛ fealtie, and

escuage,

eſcuage, may of common right diſtraine for it if it be behind, for homage, fraitie, and eſcuage ben ſeruices by which lands and tenements be holden, and ben ſuch that in maner may be taken but as ſeruices. But otherwiſe it is of rent that was once rent ſeruice, for this, that when it is ſeuered &c. by the grant of the Lord from the other ſeruices, it may not be ſaid rent ſeruice, for this, that it hath not to it fealty which is incident to euery manner of rent ſeruice, and for this it is ſaid rent ſecke.

Alſo if a man let land to an other for terme of life, reſeruing to him certaine rent, if he graunt the rent to an other, ſauing to him the reuerſion of the land ſo letten by his deede &c. ſuch rent is but rent ſecke, for this that the graunte hath nothing in the reuerſion of the land. But if he grant the reuerſion of the land to an other for terme of life, and the tenant attourneth &c. then hath the graunte the rent as rent ſeruice, becauſe he hath the reuerſion for terme of life. And ſo it is to be vnderſtood, that if a man giue landes or tenements in the taile, reſerning to him and to his heires certaine rent, or let land for terme of life, reſerning certaine rent, if he graunt the reuerſion to an other, and the tenant attourneth, all the rent and ſeruice paſſeth by the word of the graunt of reuerſion, for this that all the rent and ſeruice in ſuch caſe be incidents to the reuerſion, and paſſe by the grant of reuerſion. But though he graunt the rent to an other,

the

the reuersion passeth not by such graunt [illegible]
And so note well the diuersitie. And so it [illegible]
holden Paschę 12.E.4.fo.3. But it is adiudg[illegible]
An.26.Lib.Ass.pl.38.39. whereas the seruic[illegible]
of the tenant in taile were graunted, that th[illegible]
was a good graunt, yet notwithstanding th[illegible]
reuersion remaines.

Also if there be Lord, mesne, and tenant
and the tenant holdeth of the mesne by [illegible]
rent of fiue shillinges, and the mesne hold[illegible]
ouer by xij. pence, if the Lord aboue purch[illegible]
the tenancy in fée, then the seruice of the [illegible]
nalty is extinct, for this, that when the L[illegible]
aboue hath the tenancy, he holdeth of the L[illegible]
next aboue him. And if he ought to hold [illegible]
him that was mesne, then he should hold [illegible]
selfe tenancy immediatly of diuers Lo[illegible]
which should be inconuenient, and the L[illegible]
will sooner suffer a mischiefe then an inco[illegible]
nience, and for this the seigniory of the [illegible]
nalty is extinct. But insomuch that the [illegible]
nant held of the mesne by fiue shillings, [illegible]
the mesne held but by xij. pence, so that [illegible]
had more aduantage by iiij. shillings, then [illegible]
paied to his Lord, he shall haue the said [illegible]
shillinges as rent secke yéerely of the L[illegible]
that purchased the tenancy.

Also if a man that hath Rent secke, [illegible]
once seised of any parcell of the rent, [illegible]
after if the tenaunt will not pay the [illegible]
that is behinde, this is his remedy: It [illegible]
houeth him to goe by himselfe, or by an o[illegible]

to the lands and tenements, whereof the rent is issuing, and there to demaund the arrerages of the rent. And if the tenant deny to pay it, this denying is a disseisin of the rent. Also, if the tenant at the time be not readie to pay it, this is a denying and a disseisin. Also, if the tenant, nor none other be dwelling vpon the lands or tenements when he asketh the arrerages &c. this is a denying in law, and a disseisin in deede, and of such disseisins he may haue an action of Nouel disseisin against the tenant, & recouer the seisin of the rent, and the arrerages, and his damages and costes of his writ, and of his plea &c. And if after such recouery the rent be another time denyed him, then he shall haue a Redisseisin, and recouer double damages.

And it is to be had in mind, that this name Assise, is Equiuocum, for sometime it is taken for a Jury, for in the beginning of the record of Assise of Nouel disseisin, the record shall begin thus, (Assisa venit recogn̄) which is to say, that Iuratores ven̄ recogn̄, and the cause is for this, that by the writ of Assise is commanded to the Shirife, Quod faciat xij. liberos & legales homines de vicineto &c. videre fectum illud, & nomina eorum imbreuiare, & quod summon̄ eos per bonos summon̄ quod sint coram Iusticiarijs &c. parati inde facere recognitionem &c. And for this, that by force of such an originall writ, a Panell by force of the same writ ought to be returned &c. it is

said

said in the beginning of the Record in Assise, Assisa venit recogñ &c. Also in a writ of right it is commonly said, that the tenant may put him in God and in the great Assise &c. Also there is a writ in the Register called, De magna Assisa eligenda, so is this a good proofe that this name Assise is sometime put for the Iurie, and sometime it is taken for all the writ of Assise, and after that intent it is most properly and most commonly taken, as Assise of Nouel disseisin, is taken for all the writ of Assise of Nouel disseisin. In the same maner Assise of common of pasture, is taken for all the writ of assise of common of pasture, and assise of Mortdauncester, and Assise of Darraine presentment &c. But it seemeth that the cause why such writs at the beginning were called Assises, is for this, that by euery such writ it is commanded to the Shirife, that he summon xij. &c. which is as much to say, that he ought to summon a Iurie &c. and sometime Assise is taken for an ordinance, for to set certaine things in a certaine rule and disposition, as an ordinance that is entred in the auncient estatutes is called Assisa panis & seruitiæ.

Also if there be Lord & tenant, & the Lord graunteth the rent of his tenant by deed to an other, sauing to him the other seruices, and the tenant attourneth, that is a rent secke, as it is aforesaid: But if the rent be denyed him at the next day of payment, hée hath no remedie but this, that he had not thereof any possession.

But if the tenant when hée attourneth to the grauntée, or after, will giue a penny, or a halfe penny to the grauntee in name of seisin of rent, then if after at the next day of paymẽt the rent be denyed him, he shall haue an Assise of Nouel disseisin. And so it is, if a man graunt by his deed a yeerely rent issuing out of his land to another &c. if the grauntor then after pay to the grauntée a penie, or an halfe penie, in the name of seisin of the rent, then if after the first day of payment the rent be denyed, the grauntée may haue an Assise, or else not.

Also of rent secke a man may haue an Assise of Mordauncester, or a writ of Aiel, or Cosinage, & all other maner of actions reals, as the law lyeth, as he may haue of any other rent.

Also there be three causes of disseisin of rent service, that is to say: Rescous, Repleuin, and Enclosure. Rescous is, when the Lord distraineth in the land holden of him for his rent behind, if the distresse be rescued from him, or the Lord come vpon the land, and would distrain, and the tenant, or another man will not suffer him &c. Repleuin is, when the Lord hath distrained, and Repleuin is made of the distresse, by writ, or by plaint &c. Enclosure is, the lands and tenements be so enclosed, that the Lord may not come within the lands and tenements for to distrain. And the cause why such things so done be disseisins made to the Lord, is for this, that by such things the Lord is disturbed of the meane by which he ought to

haue come to his rent. And foure cauſes be
diſſeiſin of rent charge: that is to ſay, Reſcou
Repleuin, Encloſure, and Denier, for deny
is a diſſeiſin of rent charge, as it is afore
of rent ſecke. And two cauſes be of diſſeiſin
rent ſecke: that is to ſay, Encloſure, & Den
And yet it ſéemeth that there is an other ca
of diſſeiſin of all the three rents aforeſaid, t
is, when the Lord is going to the land hol
of him for to diſtraine for the rent being
hinde, the tenant hearing this, encount
him, and foreſtalleth him the way with
and armes, and manaſſeth him in ſuch
that he dare not come to the land to diſtra
for his rent behinde &c. for doubt of death,
bodily hurt, this is a diſſeiſin, for this, that
Lord is diſturbed of the meane whereby
ought to come to his rent. And ſo it is
ſuch foreſtalling & manaſſing, hée that
rent charge, or rent ſecke is foreſtalled, or
not come to the land to aſke the rent behind.

The third Booke.

Parceners.

PArceners be in two manners: that is
ſay, Parceners after the courſe of
Common Law, and Parceners
the cuſtome. Parceners after the cour
the Common Law, be where a man or
man is ſeiſed of certein lands or tenement
fée ſimple, or fée taile, and hath none iſſue
Par

aughters and dieth, & the tenements discend
o the daughters, and the daughters enter in=
o the lands & tenements so to them discended,
hen they be called Parceners, and be but one
eire to their auncestor. and they be called par=
eners, for this, that by the writ that is called
Breue de participatione facienda, the law will
onstraine them that partication shall bee
ade among them, & if there be ij. daughters
o whom the land discendeth, then they be cal=
d two parceners, and if they be 3. daughters,
hey be called 3. parceners, and 4. daughters
. parceners, and so forth. And if a man seised
f lands in fee simple, or fee taile, die without
ssue of his body, & the tenemẽts discend to his
sters, they be parceners as is aforesaid. In
he same maner it is, where he hath no sisters
ut the land discendeth to his Aunts, they be
arceners. But if a man hath but one daugh=
er, she may not be said parcener, but daughter
nd heire. And it is to wit, that partition be=
weene parceners may be made in diuers ma=
ers: One is when they agree to make parti=
ion, & make partition of the tenements, as if
here be 2. parceners to deuide betweẽn thẽ the
enement in ij. parts, euery part by himselfe in
uerality of euen value, & if there be 3. parce=
ers to deuide the tenements in 3. parts in se=
erality. In other partition there is to chuse
y agreement betweẽn them, certeine of their
inds to make the partition betweẽn them of
he lands & tenements in the forme aforesaid.

And in such cases after such partitions the e-
dest daughter shall chuse first one of the par
so deuided, which shee will haue for her par
And then the second daughter after her a
other part &c. if it so be that there be ma
sisters &c. if it be not that they be otherwi
agréed betweene them, for it may be agréed b
twéene them, that one of them shall haue su
tenements, and an other such tenements &
without any such first election, and the pa
that the elder sister hath, is called in Lat
Enitia pars. But if the Parceners agre th
the elder sister shal make partition of the te
ments in the forme afor esaid, & if shé doe, th
it is said that the elder sister shal chose the l
part after each of her other sisters. An oth
partition and allotting there is: as if there b
inf. Parceners, and after such partition ma
of the lands, euery part of the land is by it s
written in a little scrowle, & it is couered all
ware, in maner of a little ball, so that no m
may sée the scrowle, then are the foure balls
ware put in a Bonet to kéepe in the hands
an indifferent man, and then the elder daug
ter first shall put her hand in the bonet, an
shall take a ball of ware, & the scrowle with
the same ball for her purparty. And then t
second sister shall put her hand in the bon
and shall take an other. And so then the th
sister the third ball &c. and in this case it be
neth each of them to hold them to their ch
and allotment.

Also an other partition there is, as if there be fower Parceners, and they will not agree that partition shal be made betwéen them, then one of them may haue a writ de Participatione facienda against the other three sisters, or two may haue a writ of Participatione facienda against the other, or they three against the fourth, at their election, and when iudgement shall be giuen vpon such a writ, the iudgement shall be such, that partition shall be made betweene the parties, and the Shirife in his proper person shall go to the landes and tenements &c. and there he by the oath of xij. true men of his bayliwike &c. shall make partition betweene the parties, the one part of the same lands shall be assigned to the plaintife, or to one of the plaintifes, and an other part to an other &c not making mention in the iudgement of the eldest sister more then of the yongest, and of the partition that he hath thus done, he shal make notice to the Iustices &c. vnder his seale, and the seales of the xij. &c. And so in this case may you see, that the elder sister shall not haue the first election &c. but the Shirife shall assigne the part that she shall haue &c. and it may be that the Shirife will assigne the first part to the yonger sister, & the last part to the elder.

And note well, partition by agreément betweéne Parceners may by the Law be made among them, aswell by word without deéde, as by deéde.

Also, if two meales discend to two Par-

ceners, and the one meale is worth by yéere xx.s. & the other but x. s. by yéere, in this case partition may be made betweene them in such forme, that the one parcener shall haue the one meale, and the other parcener shall haue the other meale, and shée that shall haue the meale of xx.s. and her heires shall pay a yeerely rent of v. s. issuing out of the same meale to the other parcener, and to her heires forever, because that euery of them shall haue euen in value, & such partition made, is good enough, and the same parcener that shall haue the rent of v. s. and her heires may distraine for the rent of common right in the same meale of the value of xx.s. if the rent of v.s. be behind at any time in whose hands soeuer the same meale commeth, though there was neuer writing made of it betweene them. In the same maner it is of partition of all maner of landes and tenements &c. where such rent is reserued to one or to diuers parceners vpon such partition &c. but such rent is not rent seruice, but rent charge, of common right had and reserued for egalty of the partition. And note well that none be called Parceners by the Common Law, but women or the heires of women, and which come by landes and tenements by discent, for if sisters purchase landes or tenements, of this they be called Joint tenants and not Parceners. Also if two parceners of land in fée simple make partition betweene them &c. and the part of the one

valueth much more then the part of the other, if they were at the time of partition of full age, that is to say, of 21. yéeres, then they alway shall abide and neuer be defeated: But if the tenements whereof partition is made, bée to them in fée taile, and the part that the one hath is much better in yéerely value then the part of the other, howbeit that they bée excluded during their liues to defeate the partition, yet if the parcener that hath the lesser part in value hath issue and dyeth, the issue may disagrée to the partition, & enter, & occupy in common that other part that is allotted to her Aunt, & so the Aunt may enter and occupie in common the other part allotted to her sister, as if no partition thereof had béen made &c.

Also, if two Parceners of tenements in fée take husbands, and they and their husbands make partition betweéne them, if the part of the one be lesse in yerely value then the part of the other, during the liues of the husbands the partition shall be in his force and strength: yet after the death of the husband the wife that hath ỹ lesse part may enter in her sisters part, as it is aforesaid, & defeat the partition: But if the partition so made betweéne them were such, that euery part at the time of allotment were egall of yéerely value, then it may not after be defeated in such cases.

Also, if there be two parceners, & the younger of them be within the age of xxj. yéeres, & partition is made betweéne them, so that the

part that is allotted to the yonger, is lesse in
value then the part of the other: In this case
the yonger during the time of her nonage, and
also when she cõmeth to full age of xxj. yeres,
may enter in the porcion to her sister allotted,
&c. and defeat the partition: But such a par-
cener ought to take heede when shee commeth
to full age, that she ne take to her owne vse all
the profits of the tenements to her allotted, for
by that shee agreeth to the partitiõ at such age,
in which case the partition shall stand and a-
bide in his force and strength &c. but peraduenture the profits of the halfe shee may take,
leauing the profits of the other halfe, to her
sister &c. It is to wit, that when it is said
males and females be of full age, that shall be
vnderstode of the age of 21 yeeres: for if any
feoffement or graunt, release, confirmation,
obligation, or any other writing before any
such age bee made by any of them &c. or that
any within such age bee Baillife or Receiuer
with any man &c. all serueth for nought & may
be auoyded. Also a man before such age shall
not be sworne in no Jurie, nor no inquisition.

Also if tenements be giuen to a man in the
taile, which hath as much land in fee simple,
and hath issue two daughters and dyeth, and
the daughters make partition betweene them,
so that the lands in fee simple be allotted to the
younger daughter, in allowance of the tene-
ments tayled, allotted to the elder daughter,
if after such partition the younger daughter

alieneth the land in fée ſimple to an other in fée, and hath iſſue a ſonne, or a daughter, and dyeth, the iſſue may enter in the tenements tailed, and them hold in purparty with their Aunt, and this is for two cauſes: One is for that, that the iſſue may haue no remedy of the land alienedby the mother, for that the land was to her in fée ſimple, and inſomuch as he is one of the heires in the taile, and hath nothing recompenced of that, that to him belongeth of the tenements tayled, it is reaſon that he haue his purparty of the land in taile, and namely when ſuch partition maketh no diſcontinuance of the taile, as ſhal be ſaid hereafter in the chapter of Diſcontinuance. But the contrary is holden M.20.H.6.fol.13. that is to ſay, that he may not enter vpon the parcener that hath the land tailed, but is put to his ſute by writ of Formedon. An other cauſe is, for that it ſhall be counted the folly of the elder ſiſter, that ſhée would agree to the partition, where ſhée might haue had halfe the land in fée ſimple, and halfe of the tenements in the taile for purpartie, and ſo to be ſure without damage &c.

Alſo if a man ſeiſed in a plough land by iuſt title, diſſeiſeth an infant within age of another plough land, & hath iſſue two daughters, and dieth ſeiſed of both thoſe plough lands, the Infant then being within age, and the daughters enter & make partition, & the one plough land is allotted for the purparty of the one, as percaſe to the yonger ſiſter in allowãce of ỹ other

plough

plough land which is allotted to the purparty of the other, so that after the Infant entreth in the plough land of the which he was disseised, vpon the possession of the parcener that hath the same plough land, then the same parcener may enter into the other plough land that her sister hath, and holdeth in parcenary with her: But if the yonger sister alien the same plough land to an other in fée simple before the Entry of the Infant, and after the childe entreth vpon the possession of the alienée, then shée may not enter into the other plough land, for this that by her alienation shee hath vtterly dismissed her selfe to haue any part of the tenements as parcener: But if the younger Sister before the entrie of the Infant make thereof a Lease for terme of yéres, or for terme of life, or in fée tayle, sauing the reuersion to her, and after the childe entreth, there paraduenture it is otherwise, for this, that shée dismisseth not her selfe of all that, that was in her, but hath reserued to her the reuersion and the fée simple &c.

Also, if there be thrée or foure Parceners that make partition betwéen them, if the part of the one parcener be defeated by such lawfull entry, shée may enter and occupie the other lands of all the other parceners, and compell them to make new partition of the other lands betwéene them &c.

Also, if there be two parceners, and the one taketh a husband, and the husband and

the

the wife haue issue betweén them, and the wife dieth, and the husband holdeth him in the halfe as tenant by the curtesie: In this case the parcener that survyueth, and the tenant by the curtesie may well make partition betweén thē &c. And if the tenant by curtesie will not agrée to make partition, then the parcener that survyueth may haue a writ de Participatione facienda &c. and compell him to make partition. But if the tenāt by the curtesie will haue partition betweene them, & the parcener that survyueth will not haue it, then the tenant by the curtesie shal haue no remedy for to haue partition, for he may not haue a writ de Participatione facienda, for this that he is not parcener, for such a writ lyeth for Parceners onely. And so may ye sée that the writ de Participatione facienda lieth against tenāts by the curtesie, & yet himselfe may not haue such a writ.

Parceners by the Custome.

PArceners by the Custome bée where a man seised in fee or fée taile of lands or tenemēts that be of the tenure called Gauelkind within the Shire of Kent, & hath issue diuers sonnes and dyeth, such landes and tenements shall discend to all the sonnes by the custome, and they euenly shall inherite and make partition betwéen them by the custome as females doe, and a writ de Participatione facienda lyeth in this case as betweéne females, but it

it behoueth in the declaration to make mencion of the custome. Also such custome is in other places in England. And also such custome is in North wales.

Also there is an other partition that is of an other nature, and in an other forme then any of the partitions aforesaid: As a man seised of certaine lands in fée simple hath issue two daughters, and the elder is maried, and the father giueth parcell of the same lands to the husband with his daughter in franke mariage, and dyeth seised of the remnant, the which remnant is of more greater value by yéere then be the lands giuen in franke mariage, in this case the husband and the wife shall haue nothing for their part of the said remnant: But if they will put in their lands giuen in franke mariage in hotchpot with the remnant of the land with her sister, and if they will not doe so, then the yonger sister may occupie the same remnant, and take to her the profites onely. And it seémeth that this worde Hotchpot is in English a pudding, for in such a pudding is commonly put not one onely thing, but one thing with an other, and for this it behoueth in such case to put the landes giuen in Franke mariage with the other landes in hotchpot, if the husband and the wife will haue any thing in the other remnant &c. This word Hotchpot is but a terme of similitude, and is as much to say, as to put lands giuen in franke mary-

age,

age, and other lands in fée simple &c. together, and this is to such intent to accompt the value of all the lands, that is to say, of the lands giuen in frankmariage, and the remnant that was not giuen, and then partition shall be made in this forme that ensueth. As put case that a man is seised of xxx. acres of land in fée simple, euery acre in value xij. pence by the yéere, which hath issue two daughters, and the one is couert baron, and the father giueth x. acres of the xxx. acres to the husband with his daughter in frankmariage and dyeth seised of the remnant, then the other sister shall enter into the remnant, that is to say, in the xx. acres, and shall occupy it to her owne vse, except the husband and the wife will put their x. acres giuen to them in franke mariage with the other xx. acres in hotchpot, that is to say, together, and then when the value is knowen of euery acre, that is to say, euery acre is yerely worth xij. d. then the partition shall be made in such forme, that is to say, that the husband & the wife shall haue aboue the x. acres giuen to them in frank mariage v. acres in seuerality of the xx. acres, and the other sister shall haue the remnant, that is xv. acres of the xx. acres for her part, so that accompting the x. acres that the husband and the wife had in franke mariage, and the other fiue acres of the xx. acres, the husband and the wife haue almuch in yérely value as the other sister hath, and so alwayes vpon such partition the landes

giuen

giuen in frankmariage, abide to the donors, & to the heires &c. after the forme of the gift &c. For if the other parcener should haue nothing of this that is giuen in frankmariage, of this should follow an inconuenience, and a thing against reason, which the law will not suffer &c. and the cause why that landes giuen in frankmariage shall be put in hotchpot is this, that when a man giueth lands & tenements in frankmariage with his daughter, or with his other cosin, it is to be vnderstood by the Law, that such gift made by such wordes frankmariage is an aduancement of his daughter, & of his cosin, and namely when the donor and his heires shall not haue any rent or seruice of him, except fealty vntill the fourth degree be passed &c.

And for such cause the law is that she shall haue nothing of the other landes & tenements discended to the other parceners &c. if she will not put the tenements giuen in frankmariage in hotchpot, as is aforesaid, and if shee will not put the lands giuen in frankmariage in hotchpot, then she shall haue nothing in the remnant, for this that it shall be vnderstood by the law, that shee is sufficiently aduanced, to which aduancement shee agreeth & holdeth her selfe contented.

The same Law is betweene the heires of the donees in frankmarriage and the parteners &c. if the donees in frankmarriage die before their auncestors, or before such par-

tition &c. as to put in Hotchpot &c.

And note well that gift in frankemarriage was by the Common Lawe, before the Statute of Westminster the second, and alway after so hath beene vsed and continued, and so forth.

Also such putting in Hotchpot &c. is where lands or tenements that were giuen in frankmarriage discended from the donor in frankmariage onely, for if the lands discend to the daughters by the father of the donor, or by the mother of the donor, or by the brother of the donor, or other auncestors, and not by the donor &c. there it is otherwise, for in such case shee to whom such gift in franke marriage is made, shall haue her part as if no such gift in franke marriage had beene made, for this, that shee was not aduanced by him &c. but by an other.

Also, if a man seised of xxx. acres of land, euery acre of euen perely value, hauing issue two daughters, as is aforesaid, and giueth of this to the husband of the daughter xv. acres in frankmarriage, and dyeth seised of the other xv. acres, in this case that other sister shal haue the fifteene acres so discended to her onely, and the husband & the wife shal not put in such case the xv. acres to him giuen in frank marriage in Hotchpot &c. for this that the tenements giuen to him in frank marriage be of as good perely value as the other lands discended &c. For if the landes giuen in franke marryage

were

were of as euen value as the remnant, or of more value, then in vaine and to none intent such landes giuen in franke mariage shall be put in hotchpot &c. for this that shee may have nothing of the other lands discended &c. For if she should haue any parcell of the other lands discended, then should she haue more in parcell value then her sister &c. Which the Law will not &c. And as it is said in the cases aforesaid, of two daughters, or two parceners, in the same maner, and in like case is, where there be moe sisters, after that as the case and the matters be &c.

And it is to wit, that lands and tenements giuen in franke marriage, shall not be put in hotchpot, but with the lands discended in fee simple, for of lands discended in fée tayle, partition shall be made as if no such gift in franke marriage had beén made. Also no lands shall be put in hotchpot with other, but lands that be giuen in franke marriage onely. For if any woman haue any other lands or tenements by any other gift in the tayle, shee shall neuer put such lands so giuen in hotchpot &c. but she shall haue the part of the remnant, discended &c. that is as much as the other parcener shall haue of the same remnant.

Also an other partition may bée made betwéene Parceners, that varieth from the partitions aforesaid: As if there bée three parceners, & the yongest would haue partition, and the other two would not, but will hold in par-

cener

enary that, that to them belongeth without partition: In this case if one part be allotted in seueralty to the yonger sister after that that shee ought to haue, then the other may hold the remnant in parcenary, and occupy in common without partition, if they will, and such partition is good enough. And if after the elder and middle parcener wil make partition betweene them of that that they held, they may well doe when they please. But where partition shal be made by force of a writ de Participatione facienda &c. there otherwise it is, for there behoueth that euery parcener haue his part in seueralty &c. More shall be said of Parceners in the Chapter of Iointenants, and also in the Chapter of Tenants in common.

Iointenants.

Iointenants be as a man seised of certaine lands or tenements &c. and thereof hath infeoffed, two, or three, or foure, or more, to haue and to hold to them and to their heires, or to haue and to hold to them for terme of their liues, or for terme of an others life, by force of which feoffement they be seised, such be Iointenants.

Also if two or three disseise an other of any lands or tenements to their owne vse, then the disseisors be Iointenants: But if they disseise an other, to the vse of one of them, then are they no Iointenants, but he to whom the

vle of the disseisin is made, is sole tenant, a
the other haue nothing in the tenancy, but
called coadintors to the disseisin &c.

And note well, that disseisin is prope
where a man entreth into any landes or te
ments, where his entrie is not lawfull, & p
teth him out that hath the franktenement
And it is to wit, that the nature of iointen
cy is, that he that suruiueth shall haue only
whole tenancy, after such estate as he ha
the iointure be continued &c. As if three Io
tenants be in fee simple, & the one hath issu
dieth, yet they that suruiue shall haue the te
ments whole, and the issue shall haue noth
and if the second iointenant haue issue and
yet the third that suruiueth shall haue the te
ments whole, and shall haue them in fee sim
to him and to his heires. But otherwise it
of Parceners, for if three parceners be, &
fore any partition the one hath issue and di
that that to her belongeth shall discend to
issue, and if such a parcener die without is
then that that to her belongeth shall discend
her heires, so that they shall haue this by
cent, and not by the suruinor as Iointena
haue &c. And as the suruinor holdeth plac
mong Iointenants &c. in the same manne
holdeth place among them that haue ioint
tate or possession with others of chattels re
or chattels personall. As if a lease of lan
tenements be made to many for term of y
he that suruiueth of the lessees shall ha

nements whole to him during the terme by
yce of the same lease. And if any Horse, or
ther chattell personal be giuen to many men,
e that suruiueth shall haue them to himselfe.
In the same maner it is of debts & duties &c.
For if an Obligation be made to many for one
utie, he that suruiueth shall haue all the det,
nd so it is of all other couenants & contracts.
Also some iointenãts may be that may haue
int estates, and be iointenants for terme of
eir liues, and yet they haue seuerall inheri-
nces: As if lands be giuen to two men, & to
e heires of their two bodies ingendred: In
is case the donées haue ioint estate for terme
their two liues, and they haue seuerall inhe-
tance: For if the one of the donées haue issue
nd die, the other that suruiueth shall haue all
the suruiuor for terme of his life. And if he
at suruiueth hath also issue and die, then the
ue of the one shall haue the halfe of the land,
nd the issue of the other shall haue the other
lfe of the land, and they shall hold the land
twéene them in common, and be not iointe-
nts, but tenants in common. And the cause
at such donees in such cases haue ioint
ate for terme of their liues, is this, for this
at at the beginning lands were giuen to
em two, which wordes without more say-
g, made a ioint estate to them for terme of
eir liues. For if a man will let lãd to another
deéde, or without deéds, not making men-
n what estate he hath, and of this maketh

liuery of seisin: In this case the lesse ha
haue estate for terme of his life, and so in
much that the lands were giuen to them, th
haue a ioint estate for terme of their liues. A
the cause why they haue seuerall inheritance
this, insomuch that they cannot by possibi
haue an heire betweene them ingendred a
man and a woman may haue &c. then the l
will that their estate and their inheritance
be such, as reason will, after the forme & e
of the wordes of the gift, and that is to
heires that the one ingendreth of his body
any of his wiues, & the heires that the o
ingendreth of his body by any of his wi
&c. So it behoueth by necessity of reason, t
they shall haue seuerall inheritances. And
such case, if the issue of one of the donées
the death of the donées die, so that he hath
issue aliue of his body ingendred, then the
nour or his heires may enter in the halfe as
his reuersion, though the other of the don
hath issue aliue &c. And the cause is, for
much as the inheritance is seuered &c. the
uersion in the law is seuered &c. and the ho
nour of the issues of the other shall hold
place to haue the whole. And so as it is sai
males, in the same maner it is where land
giuen to two females, and to the heires
their two bodies begotten.

Also if landes be giuen to two females,
to the heires of one of them, this is a
iointure, and the one hath a freehold, and

other hath fée simple, & if shée that hath the fée die, shée that hath the frœhold shall haue the whole by the suruiuor for terme of life. In the same maner it is where tenements be giuen to two, & to the heires of the body of one of them ingendred, the one hath frœhold, and the other fée taile. Also if two Iointenants be seised of estate of fée simple, and the one granteth a rent charge by his deed to an other out of that that to him belongeth &c. In this case during the life of the grantor, the rent charge is effectual. But after his decease the rent charge is void as to charge the land, for that he that hath the land by the suruiuor, shall hold all the land discharged: And the cause is for this, that he that suruiueth claimeth to haue the land by the survivor &c. and not by discent of his fellow &c. But otherwise it is of Parceners, for if there be two Parceners of tenements in fée simple, and before any partition the one chargeth that part to him belongeth by his deed, with a rent charge &c. and dieth without issue, & that that to him belongeth, discendeth to the other parcener, In this case the other parcener shall hold the land charged &c. for this that he cometh to the haile by discent as heire &c.

Also if there be two Iointenants in fée simple within one Borough where the lands and tenements within the same Borough be deuisable by Testament, if the one of the said Iointenants deuise that, that to him belongeth by testament &c. and die, this deuise is

voide. And the cause is this, that no deui
may take effect but after the death of the de
for. And for this that by his death all the la
incontinent commeth by the law to his fell
that suruiueth, by the suruiuor, which neith
claimeth nor hath any thing in the land by t
deuise, but in his owne right by the surui
after the course of the Law &c. for this ca
such deuise is void.

But otherwise it is of Parceners seise
tenements deuisable in such case of deuis
Causa qua supra.

Also it is commonly said, that euery Joi
nant is seised of the land that he holdeth io
ly &c. throughout and by all. And this is
much to say that he is seised by euery parce
by all &c. and this is true, for in euery parc
by each parcell, & by all the lands & tenem
he is iointly seised with his fellowes &c.

And if two Iointenants be seised of cert
land in fee simple, and the one letteth th
that to him belongeth to a straunger for te
of xl. yeeres and dyeth within the terme:
this case after his decease the lessee may
and occupy the halfe to him letten during
terme &c. though the lessee neuer had poss
of it in the life of the lessor, by force of this
&c. And the diuersitie betweene the case of
grant of a rent charge and this case is this
in the graunt of a rent charge by a iointe
the tenants abide alway as they were be
without that, that any hath any right to
par

parcell of the tenements but himselfe, and the tenements abide in such plight as they were before the charge &c. But where a Lease is made by a Iointenant to an other for terme of yeeres &c. incontinent by force of the Lease the selfe hath right in the same land, that is to say, of all that, that to his lessor belonged, & to haue that by force of the same lease during his terme &c. and this is the diuersitie &c.

Also Iointenants if they will may make partition betweene them, and the partition is good enough, but they shall not be compelled by the Law to doe it, but if they will make partition of their proper will and agreement, the partition shall stand in his strength. P. 3. E 4. See Sta. 31. H. 8. cap. 21. and 32. H. 8. cap. 32.

Also, if a ioint estate be made of land to the husband and the wife, and to a third person, in this case the husband and the wife haue not in the Law in their right but the halfe &c. And the third person shal haue as much as the husband and the wife haue, that is to say, the other halfe &c. And the cause is, for that the husband and the wife be but one person in the law, & be in like case as if the estate be made to two iointenants, where each one hath by force of the iointure the one halfe, and the other the other halfe. In the same maner it is, where an estate is made to the husband and the wife, and to other two men, in this case the husband and the wife haue not but the third part, and the other two men the other two parts &c. Causa

qua supra. More shalbe said of them touchin
Jointenancy, in the Chapter of Tenants i
Common.

Tenants in Common.

TEnants in Common bée they, that ha
lands and tenements in fée simple, fée tail
or for terme of life &c. which haue such lands
and tenements by seuerall title, and not in
title, & none of them knoweth that, that is
ueral to him. But they ought by the law to
cupie such lands and tenements in common
vndeuided to take the profits in common. A
because that they come to such lands and te
ments by seuerall titles, & not by one seise
title, and their occupation & possession shall
by the law among them in common, there
they be called Tenants in Common: as if
man enfeoffe two Jointenants in fée, and
of them alieneth that that to him belongeth
another in fée, now the other Jointenant
the alienée be tenants in common, for this
they be seised in such tenements by seuerall
ties, for the alienée commeth to the halfe
the feoffement of the one iointenant, & the
iointenant hath the other halfe by force of
first feoffement made to him and to his first
low, and so they be in by seuerall titles,
by seuerall feoffements &c. And it is to
that when it is said in any booke, that a
is seised in fée, without more saying it shall

vnderstood fée simple, for it shall not be vnderstood by such word in fée, that a man is seised in fée tayle, except that there be put therto such addition, that is to say, fée tayle.

Also if three Jointenants be, and the one of them alieneth that that to him belongeth to an other in fée: In this case the alienée is tenant in common with the other two Jointenants. But yet the other two Jointenants bée seised of the two parts iointly, and of those two parts the suruiuour betweene them holdth place &c.

Also if there be two Jointenants in fée, and the one giueth that, that vnto him belongeth to an other in the taile, the donée and the other iointenants be tenants in common &c. But if the landes be giuen to two men, and to the heires of their two bodies ingendred, the donées haue ioint estate for terme of their liues, and if each of them haue issue and die, their issues shall hold in common &c. But if lands be giuen to two Abbots, as to the Abbot of westminster, and to the Abbot of Saint Albons, to haue and to hold to them and to their successors, in this case they haue incontinent at the beginning estate in common, and not ioint estate: And the cause is for this, that euery Abbot, or other Soueraigne of an house of Religion before that hée be made Abbot, or Soueraigne, was but a dead man in the law. And when he is made Abbot, he is as a man personable in the law, all onely to purchase,

and

and to haue landes and tenements, and other things to the vse of his house, & not to his owne proper vse, as other seculer men may. And by this in the beginning of their purchase, they be tenants in common. And if the one of them die, the Abbot that suruiueth shall not haue it by the suruiuor, but the successor of the Abbot that dieth shall hold the halfe in common with the Abbot that suruiueth &c.

Also if lands be giuen to an Abbot and to a seculer man, to haue & to hold to them, that is to say, to the Abbot and his successors, and to the seculer man, to him and to his heires, they haue estate in common, Causa qua supra.

Also if lands be giuen to two men, to haue and to hold, the one halfe to the one and to his heires, and the other halfe to the other and to his heires, they be tenants in common &c.

Also if a man seised of certaine landes enfeoffeth another in the halfe of the same land, without any speech of assignement or limitation of the same halfe in seueraltie at the time of the feoffement, then the feoffee and the feoffor shall hold the parts of the land in cõmon. And in the same maner as is aforesaid of tenants in common of lands or tenements in fee simple or in fee taple, in the same maner may it be said of tenants for terme of life. As if two Iointenants be in fee, & the one letteth to a man that, that vnto him belongeth for terme of life, & the other Iointenant letteth that, that to him belongeth to an other for terme of life, these two

lessees

lessées be Tenants in common for terme of their lines &c.

Also if a man let lands to ij. men for terme of their liues, & the one granteth all his estate of that that vnto him belongeth to an other &c. then the other tenant for terme of life, & he to whom the grant is made be tenants in cõmon during the time that both lessées be aliue.

And it is to be remembred, that in all other such cases, though that they bee not here expressly named or specified, if they be in like reason, they be in like law.

Also if there be two Iointenants in fee, and the one letteth that, that vnto him belongeth to an other for terme of life, the tenãt for terme of life, during his life, and the other iointenant that did not let be tenants in cõmon. And vpon this case a question may rise, as this: Put the case that the lessor hath issue and dyeth, ly-uing the other iointenant his fellow, and ly-uing the tenant for terme of life, the question may be such, if the reuersion of the half &c. that the lessor hath, shall discend to the issue of the lessor, or that the other iointenant shall haue it by the suruiuor. And some haue said in this case, that the other iointenant shal haue the reuersion by the suruiuor, & their reason is such, when the iointenants were iointly seised in fee simple &c. though the one of them made estate of that, that vnto him belongeth for terme of life, and though that hee hath seuered the frankstenement of that, that to him belongeth by

by the leaſe, yet hée hath not ſeuered the fée ſimple, but the fee ſimple abideth to him iointly as it was before. And ſo it ſeemeth vnto them that the other Iointenant that ſuruiueth, ſhall haue the reuerſion by the ſuruiuor &c. And other haue ſaid the contrarie, and this is their reaſon, when one of the Iointenants letteth this that to him belongeth to an other for terme of his life, that by ſuch leaſe the franktenement is ſeuered from the iointure: And by the ſame reaſon the reuerſion that is dependant vpon the ſame franktenement is ſeuered from the iointure. Alſo if the leſſor had reſerued to him a yeerely rent vpon the leaſe, the leſſour onely ſhould haue had the rent &c. The which is a proofe that the reuerſion is onely to him, and that the other hath nothing in the reuerſion &c. And if the Tenant for terme of life were impleaded &c. and made default after default, then the leſſour ſhall be onely of this receiued to defend his right, and his fellow in this caſe in no manner ſhall be receyued: which proueth that the reuerſion of the halfe is onely in the leſſour. And ſo by conſequence if the leſſour die, lyuing the leſſée for terme of life, the reuerſion ſhall diſcend to the heires of the leſſour &c. and not come to the other Iointenaunt by the ſuruiuour, Ideo Quære. But in this caſe if the Iointenant that hath the franktenement haue iſſue and die, lyuing the leſſour & the leſſée, then it ſeemeth that the iſſue ſhall haue the halfe in his demeſne as of fée

fée by diſcent, for this that the franktenement may not by nature of the iointure be annexed to a reuerſion. And it is certaine, that he that did not let was ſeiſed of the halfe in his demeſne an of fée, and none ſhall haue any iointure in his franktenement, Ergo this ſhall diſcend to his iſſue, Sed quære. But if it be thus, that the Law in this caſe is ſuch, that if the leſſor die liuing the leſſée, and liuing the other iointenant that hath the franktenement of the other halfe, that the reuerſion ſhall diſcend to the iſſue of the leſſor, then is the iointure and the title that any of them may haue by the ſuruiuor by right of the iointure, annulled and all vtterly defeated for euer.

In the ſame maner it is, if the Iointenant that hath the franktenement die, liuing the leſſor and the leſſée, if the law be ſuch that his franktenement and fée that he hath in the halfe ſhall diſcend to his iſſue, then the iointure ſhal be defeated for euer &c.

Alſo if three Iointenants be, and the one releaſeth by his deed to one of his fellowes, all the right that he hath in the land, then hath he to whom the releaſe is made, the third part of the landes by force of the releaſe, and he & his fellow ſhall hold the other two parts iointly. And as to the third part that he hath by force of the releaſe, he holdeth the third part with himſelfe and his fellow in common.

And it is to wit, that ſometime a deede of releaſe ſhall take effect, and ſhall be in vre to

put

put the estate of him that made the release, to him to whom the release is made, as in the case aforesaid.

And also if a ioint estate bee made to the husband and his wife, and to a third person, and the third person releaseth his right that he hath &c. to the husband, then hath the husband the halfe that the third person had, and the wife of this hath nothing. And if in such case the third release &c. to the wife, not naming the husband in the release, then hath the wife the halfe that the third person had, and the husband hath nothing of this, but in right of his wife, for this that in such case the release shall inure to put the estate to him to whom the release is made, of all that that belongeth to him that made the release. And in some case a release shall inure to put all the right that hee hath that made the release, to him to whom the release is made. As if a man seised of certaine landes and tenements, is disseised by two disseisors, if the disseisee by his deed release all his right &c. to one of the disseisours, then hee to whom the release is made, shall haue and holde all the tenements to him onely, and put his fellow out of any occupation of it: and the cause is, for this that the two disseisours were seised in the tenements by wrong of them done against the Law. And when one of them hath the release of him that had right to enter &c. this right in such case resteth in him to whom the re-

releas is made, and in such plight, as if he that had the right had entred and enfeoffed him &c. And the cause is for this, that hée that before had an estate by wrong, that is to say, by disseisin, now by the release hath a rightfull estate.

And in some case a releas shal enure by way of extinguishment, and in such case such release shall help the iointenant to whom the release is not made, aswell as him to whom the release is made. As if a man be disseised, and the disseisor maketh a feffement to two men in fée, if the disseisée release to one of the feoffées in fée by his déed, then such release shal inure to both the feffées, for this, that the feffées haue estate by the Law, that is to say, by the feoffement, and not by any wrong, done to any other.

And in the same maner it is, if the disseisor make a release to a man for terme of life, the remainder ouer to an other in fée, if the disseisée release to the tenant for terme of life, all his right &c. this release enureth aswell to him in the remainder, as to the tenant for terme of life &c. And the cause is for this, that the tenãt for terme of life cõmeth to his estate by the course of the Law, and for this the release shall enure and take effect by way of extinguishmẽt of the right of him that hath released &c. And by this releas the tenãt for terme of life hath no greater estate then hé had before the release made vnto him, and the right of him that released is all vtterly extinct. And in so much that such re-

releaſe cannot inlarge the eſtate of the tenant for terme of life, it is reaſon that the remainder ſhall enure to him in the remainder &c. More ſhall be ſaid of Releaſes, in the Chapter of Releaſes.

Alſo if there be two Parceners, and the one alieneth that, that vnto him belongeth to the other, then the other parcener and the alienee be Tenants in common.

Alſo Tenants in common may be by title of preſcription, if the one and his auncеſtors, or they whoſe eſtate hee hath in the halfe, have holden in common, the ſame halfe with the other tenant that hath the other halfe, & ſo his auncеſtors, of them whoſe eſtate he hath as vndeuided, from time whereof no memorie runneth. And diuers other matters may make and cauſe men to be tenants in common that bee not here expreſſed.

Alſo in ſome caſe tenants in common ought to haue of their poſſeſſion ſeuerall actions, and in ſome caſes they ſhal ioine in one action, for if there be two tenants in common, and they be diſſeiſed, they ought to haue againſt the diſſeiſor two Aſſiſes, & not one Aſſiſe, for euery of them ought to haue an Aſſiſe of his halfe &c. and the cauſe is for this, that tenants in common were ſeiſed by ſeuerall titles: But otherwiſe it is of Iointenants, for if there be three Iointenants, & they be diſſeiſed, they ſhall haue in all their names but one Aſſiſe, becauſe that they had but one ioint title.

Also if there be three Jointenants, and one releaseth to one of his fellowes all the right that he hath, and after the other two be disseised of the whole &c in this case the other shall haue seuerall Assises in this forme, that is to say, they shall haue in both their names one Assise of the two parts &c. for this that they held the two parts iointly at the time of the disseisin: And as to the third part, he to whom the release is made, ought to haue thereof an Assise in his owne name, for this, that as to the third part hee is tenant in common &c. for this, that he came to the third part by force of the release, and not onely by force of the inture.

Also, as to sue actions that touch the realty, there is diuersity betweene parceners that come in by diuers discents, and tenants in common. For if a man seised of certaine lands in fee, haue issue two daughters and die, and they enter &c. and each of them hath issue a sonne, & dieth without partition made betweene them, by which the one halfe discendeth to the sonne of the one parcener, and the other halfe discendeth to the sonne of the other parcener, & they enter and occupy in common, and be disseised: in this case they shall haue in their two names one Assise, and not two Assises: and the cause is, that though they come in by diuers discents &c. yet they be Parceners, and a writ de Participatione facienda lieth betweene them, though they be not Parceners, hauing regard or re-

respect onely to the seisin and possession fro
their mothers, but they be parceners, ha
more respect to their estate that discended fr
their graundfather to their mothers: For th
may not be parceners, where their moth
were not parceners before &c. And so to
respect and consideration, that is to wit, as
the first discent, that was to their mothe
they haue a title in parcenarie, the which m
keth them parceners: And also they be but
one heire to their common auncestor, that
to say, to their graundfather, from wh
the land discended to their mothers: And
these causes before partition betweene them
they should haue one Assise, though they c
in by seuerall discents &c.

Also, if there be two tenants in comm
certaine lands in fée, and they giue the
land to an other man in the taile, or let it to
other man for terme of life, yeelding an an
tie, or certaine rent, and a pound of Pep
or an Hauke, or an Horse, and they bee
of these seruices, and after all the rent is
hind, and they distraine for it, and the te
maketh refcous: In that case as to the
and the pound of Pepper, they shall haue
Assises: and as to the Hauke, and the
but one Assise. And the cause why they
two Assises as to the rent and pound of P
per, is this, insomuch that they were
nants in common by seuerall titles, and
they made a gift in the tayle, or lease for

life &c. saying to them the reuersion, and
elding to them certeine rent &c. Such reser-
ation is incident to their reuersion. And for
is that their reuersion is in common, and
y seuerall titles, as their possession was be-
re, the rent, and other thinges that may be
uered and were to them reserued vpon the
ft, or vpon the lease, which be incident by
e law to the reuersion, such thinges so se-
red were of the nature of the reuersion,
hich reuersion is to them in common by se-
rall titles.

And it behoueth that the rent of the pound
Pepper which may be seuered be to them
common by seuerall titles. And of this
ey shall haue two Assises, and euery of them
his assise shall make his plaint of the halfe
the rent, and of the halfe of the pound of
epper &c.

But of the Hauke & the Horse which can-
t be seuered, they shall haue but one Assise,
a man may not make a plaint in assise of
halfe of an Hauke, or the halfe of an Horse
In the same maner it is of other rents and
uices that tenants in cõmon haue in grosse
diuers titles.

Also, as to actions personels, tenants in
mmon ought to haue such actions personels
uth in all their names, that is to say,
Trespasse, or of offences that touch their
ements in common: as of breaking of
ir houses, breaking of their closes and

pastures, wasting & defouling of their gra[illegible] cutting of their wood, & to fish in their pon[illegible] and such other: In this case tenants in com[illegible] mon shall haue one action iointly, and recou[illegible] ioint damages, because that the action is [illegible] the parsonalty, and not in the realty.

Also, if two Tenants in common make [illegible] lease of their two tenements to an other [illegible] terme of yéeres, yelding vnto them yéerely [illegible] certaine rent, if the rent be behind &c. the te[illegible] nants shall haue one action of Debt agai[illegible] the lessée, and not diuers actions, for that [illegible] action is in the personalty.

Also tenants in common may make par[illegible] tion betweene them if they will, though th[illegible] shall not be compelled by the Law. But [illegible] they make partition betwéene them by th[illegible] agréement and assent, such partition is g[illegible] enough, as it is adiudged in the booke of As[illegible] ses P.3.E.4.

Also as there be tenants in cōmon of lan[illegible] or tenements &c. as is aforesaid: In the [illegible] maner there be tenāts in common of chatt[illegible] reall, and chattels personall. As if a Lea[illegible] made of certaine lands to two men for te[illegible] of xx. yéeres, & when they be thereof posse[illegible] the one of the lessées granteth that, that [illegible] him belongeth before of the terme to an oth[illegible] then he to whom the graunt is made, and [illegible] other shall hold and occupy in common.

Also, if two Jointenants haue the [illegible] the body and of the lands of a childe [illegible]

ge, and the one of them graunteth to an other that, that vnto him belongeth of the same ward, then the grauntée & the other that graunteth not, shall haue & hold it in common &c.

In the same maner it is of chattels personals: As if two haue a ioint estate by gift or by buying of an Hoyse, or an Oxe &c. the one of them graunteth that, that to him belongeth of the same Hoyse or Oxe &c. Then the grauntée and he that graunteth not, shall haue & possesse such chattell personall in common &c. And in such cases where diuers persons haue chattels reals or personals in common, and by diuers titles, and one of them die, the other that suruiueth, shall not haue that by the suruiuor. But the executours of him that dyeth shall hold and occupy that with him that suruiueth, as their testatour did or ought in his life &c. for this that their titles and right in this case were seuerall.

Also, in this case aforesaid, if two haue estate in common for terme of yeres, & the one occupy all and put the other out of his possession and occupation: Then shall he that is put out of occupation, haue against the other a writ de Ejectione firmæ for the halfe against the other. In the same maner it is where two holde the warde of landes or tenements during the nonage of a childe, if one put out the other of his possession, he that is out, shal haue writ of Ejectment de garde of the halfe, for this that those thinges bée chattels reals,

and may be apporcioned and seuered &c. B
no such action of trespas, that is to say, Q
clausum suum fregit, & herbam suam conc
cauit & consumpsit &c. and such like acti
the one may not haue against the other,
this that each of them may enter and occu
in common &c. throughout and by all the te
ments which they holde in common. Bu
two be possessed of chattels personals in co
mon by diuers titles, as of an horse, or an
or a cow, if the one take it all to himself o
the possession of the other, the other hath
other remedy but to take this of him that h
done to him the wrong for to occupy in co
mon when he may for his time.

In the same maner it is of chattels r
that may not be seuered, as in the case a
If two be possessioners of a ward of the
of a child within age, if one take the child
of the possession of the other, the other hath
remedy by any action by the Law, but to
the child out of the others possession when
seeth his time &c.

Also, when a man in pleading will sh
deed of feoffement made vnto him, or a gift
the taile, or a lease for terme of life of any
or tenements, there he shall say by force
which feoffement, gift, or lease, he was
&c. But where a man will plead a lea
grant made vnto him of a chattell reall or
sonall, there he shall say, by force of which
was possessed.

More shall be said of Tenants in common in the Chapter of Releases, and Confirmations.

Estates vpon Condition.

ESTates that men haue in landes or tenements be in two manners: that is to say, they haue estate vpon condition in deede, or vpon condition in Law. Upon condition in deed, is as a man by deed indented infeoffeth an other in fee, reseruing to him and to his heires yerely a certaine rent, payable at one feast, or at diuers feasts by the yere, vpon condition, that if the rent be behind &c. that it shall be lawfull to the feoffor and to his heires to enter into the lands or tenements &c. Or if the land be alienedto an other in fee, to yeld vnto him certaine rent &c. And if it hap that the rent be behinde by a weeke after any day of payment of it, or by a Moneth, or by a halfe yere after any day of payment, that then it shall be lawfull to the feoffor and to his heires to enter &c. In this case, if the rent be not paied at such a day, or before such a time limitted and specified within the Condition comprised in the Indenture, then may the feoffour or his heires enter into such landes or tenements, and them in his first estate to haue and to hold, and of this to put the feoffee cleane out: And it is called Estate vpon condition, for this, that the

estate of the feoffee is defeasible, if the condition be not performed.

In the same manner it is if landes be given in the taile, or let for terme of life, or for terme of yeares, vpon such condition &c. But when a feoffement is made of certaine landes, reseruing certaine rent vpō such condition, that if the rent be behind, that it shall be lawful to the feoffor and his heires to enter, and the land to hold till they be satisfied or payed of their rent behind &c. In this case if the rent be behinde, and the feoffor and his heires enter, the fee is not excluded cleane out, but the feoffor shall haue and hold the land, and take the profits till that hee be satisfied of the rent behinde &c. And when hee is satisfied, the feoffee may re-enter in the same land, and hold it as hee did before, for in such case the feoffor shall haue it but in maner for a distresse, in the meane time til he be satisfied of the rent &c. though he take the profits in the meane time.

Also, diuers wordes among other there be, that by vertue of them selfe make estate vpon condition: One is, this word of Condition, as A. enfeoffeth B. of certaine land, to haue and to hold to the same B. and to his heires vpon Condition, that the same B. and his heires shall pay, or doe to be payed to the foresaid A. and to his heires yerely such rent &c. In these cases without any more saying the feoffee hath estate vpon condition. Also if the Condition were such. Prouided alway, that

the aforeſaid B. pay, or doe to be paied to the aforeſaid A. ſuch rent: Or if they were thus, ſo that the foreſaid B. pay, or doe to be payed ſuch rent: In theſe caſes without any more ſaying, the feoffee hath eſtate but vpon condition, ſo that if hee performe not the condition, the feoffor and his heires may enter &c.

Alſo, other wordes there be in a deede that cauſeth the tenements to be conditional, as vpon ſuch a feoffement a rent is reſerued to the feoffor &c. and after it is put in the deede, that if it chance the aforeſaid rent to be behinde in part or in all &c. that then it ſhall be lawfull to the feoffor and to his heires to enter, and this is a deed vpon Condition. But there is diuerſitie betweene the wordes (if it chaunce &c.) and the wordes next aforeſaid, for this word (if it chaunce &c.) is nought worth to ſuch condition: But if it hath theſe wordes following, that is to ſay: that it ſhall be lawfull to the feoffor and to his heires to enter &c. But in theſe caſes aforeſaid, it needeth not by the law to put ſuch clauſe, that is to ſay, that the feoffor and his heires may enter &c. for this, that they may ſo doe by force of the wordes aforeſaid, becauſe they containe in themſelues in the Law a Condition, that is to ſay: That the feoffor and his heires may enter. Yet it is common in all ſuch caſes aforeſaid, to put ſuch clauſes in the deedes, that is to ſay: if the rent be behinde &c. that it ſhall be lawfull to the ſame feoffour and his

heires

heires to enter &c. And this is well done to that intent for to declare and expresse to the lay men that be not learned in the Law, the manner and the condition of the feoffement &c. As a man seised of land as of franktenement, lets the same land to an other by deed indented for terme of yeres, yeelding vnto him certain rent, it is vsed to be put in the deed, that if the rent be behinde at the day of payment, by a Moneth &c. that then it shall be lawfull to the lessor to distraine &c. and yet the lessor may distraine of common right for the rent behinde &c. though such wordes neuer were set in the deed &c.

Also, if a feoffement be made vpon such condition, that if the feoffour pay at a certain day &c. twentie pound of money, that then the feoffour may enter &c. In this case the feoffee is called tenant in Mortgage, that is as much to say in French, as Mortgage, and in Latin Mortuum vadium, and in English a dead pledge. And it seemeth that the cause why it is called Mortgage, is that it standeth in doubt if the feoffor will pay at the day limitred, such a summe or not: And if he pay not, then the land that is put in pledge vpon condition for the payment of the money, is gon from him for euer, and so dead as to the tenant &c.

Also, as a man may make a feoffement in fee in Mortgage, so may a man make a gift of the tayle in Mortgage, and a lease for terme

of lyfe, or for terme of yéres in Mortgage And all such tenants bée tenants in Mortgage after the state that they haue in the lands &c.

Also, if a Feoffement be made in Mortgage, vpon condition that the feoffour shall pay such a summe at such a day &c as is betweene them by their deede indented accorded and limitted, though the feoffour die before the day of payment &c. yet if the heire of the feoffour pay the summe within the day to the feoffée, or profer him the money, and the feoffee refuseth to receiue it, then may the heire enter into the lands. And yet the condition is, if the feoffor pay such a summe such a day &c. and not making mention in the condition of any payment to be made by his heire, but for this that the heire hath interest of right in the condition &c. And the intent was but that the money should be payed at such a day set &c. and the feoffée hath no more damage to be payed by the heire, then though he were payed by the father &c. for this cause if the heire pay the money, or tenders the money at the day set &c. and the other refuseth it, he may well enter. But if a straunger of his owne head that hath no interest &c. would tender and pay the money at the day set, then the feoffee is not bound to receyue it &c.

Also, it is to be had in minde, that in such case where such lawfull tender of the money

is

is made, and the feoffee refuseth to receiue it, wherefore the feoffor or his heires do &c. then the feoffee hath no remedy to haue his money by the common Law, for this that it shall be counted his owne folly that he refuseth the money when lawfull proffer was made of it vnto him &c.

Also, if a feoffement be made with such condition, that if the feoffee pay to the feoffor at such a day betweene them limitted &c. that then the feoffee shall haue the land to him and to his heires, and if he faile to pay the money at the day &c. that then it shall be lawfull to the feoffor, or to his heires to enter &c. And after, before the day set, the feoffee selleth the land to an other, and thereof make a feoffement vnto him, in this case if the second feoffee will tender the summe of money at the day set to the feoffor, and the feoffor refuseth it &c. then hath the second feoffee estate in the land cleerely without condition: And the cause is, for that the second feoffee had interest in the condition for saluation of his tenancy. And in this case it seemeth, that if the first feoffee after such sale of land will tender the money at the day set &c. to the feoffor, that shall be good enough for the saluation of the estate of the second feoffee: for this, that the first feoffee was priuie to the condition, and so the tender of any of them is good ynough &c.

Also if the feoffement be made vpon condition, that if the feoffor pay a certain summe of money

to the feoffée: that then it ſhal be lawfull to the feoffor and to his heires to enter &c. In this caſe if the feoffor die before the day of paiment, and the heire will tender to the feoffor the money, ſuch tender is voide: for this that the time within which the tender ought to bée made, is paſt. For when the condition is, that if the feoffor pay the money to the feoffée, this is as much to ſay, that if the feoffor during his life pay the money to the feoffée &c. And when the feoffor dyeth, then the time of the tender is paſt. But otherwiſe it is where day of payment is limitted, and the feoffor dyeth before the day, then may the heire tender the money, as is aforeſaid, for this that the time of the tender was not paſt by the death of the feoffor. Alſo it ſéemeth in ſuch caſe where the feoffor dyeth before the day of payment, if the executors of the feoffor tender the money to the feoffée at the day of payment, the tender is good enough. And if the feoffée refuſe this, the heires of the feoffor may enter &c. And the cauſe is for this, that the executors repreſent the perſon of their teſtator &c.

And note well, that in all ſuch caſes of condition of payment of certaine ſumme in groſſe, touching lands or tenements, if lawfull tender be once refuſed, he that ought to pay the mony is therof quited & clérely diſcharged for ever.

Alſo, if the feoffée in mortgage before the day of payment that ſhall be made vnto him make his executors & die, and his heire enter into the land

land as he ought. It seemeth in this case that the seoffor ought to pay the money at the day set to the executors, and not to the heire of the feffee, for this, that the money at the beginning belonged to the feoffée in maner as a duty. And it shall be vnderstood, that the estate was made because of borowing of the money of the feoffée, or because of an other dutie, & for that the payment shall not be made to the heire of the feoffée, as it seemeth. But the wordes of the condition may be such, that the payment shall be made vnto the heire, as if the condition were that the feoffor pay to the feoffée, or to his heires, such a summe at such a day &c. Then after the death of the feoffée (if he die before the day limitted) then the payment ought to be made to the heire at the day set &c.

Also in such case of a feoffement in Mortgage, a question hath been demaunded, in what place the feoffor is bound to tender the money to the feoffée at the day set &c. And some haue said, that vpō the land so holden in Mortgage, for this, that the condition is dependant vpon the land, and they haue said, that if the feoffor be ready vpon the land, to pay the money at the feast or day set, and the feoffée be not at the time there, that then the feoffor is excluded and discharged of payment of the money, for this, that no default was in him. But it seemeth to some men that the law is contrary, and the default is in him: for hee is bound to seeke the feoffée, if he be then at that time in any

of place within the Realme of England. As if a man be bound in an Obligation of xx. li. vpon condition indorced vpon the Obligation, that if he pay to him to whom the Obligation is made, at ſuch a day ten pound, that then the Obligation of xx. li. ſhall loſe his force, & ſhall be holden for nought: In this caſe it behoueth him that made the Obligation to ſéeke him to whom the Obligation is made, if hée be within England, and at the day ſet, to tender him the ſaid x. li. &c. Or otherwiſe hée forfaiteth the ſumme of xx. li. compriſed within the Obligation, and ſo it ſéemeth in the other caſe &c. And though that ſome haue ſaid that the condition is dependant vpon the land, yet this is not proued that the ſeſance of the condition to be performed, ought to be made vpon the land &c. No more then if the condition were, that if the feoffor ſhould do at ſuch a day &c. an ſpeciall corporall ſeruice to the feoffée, not naming the place where the corporall ſeruice ſhould be done: In this caſe the feoffor ought to do ſuch corporall ſeruice at the day limitted to the feoffée, in whatſoeuer place in England that the feoffée be, if hée will haue aduantage of the condition &c. And ſo it ſéemeth in that other caſe. And it ſéemeth to them, that it ſhall be more properly ſaid, that the eſtate of the lād is dependant vpon the Condition &c. then to ſay, that the Condition is dependant vpon the land: But inquire &c.

But if a feoffement in fée be made reſer-

ning

uing to the feoffor an annuell rent, and by
default of payment a reentrie &c. in this case
it needeth not to the tenant to tender the rent
when it is behinde, but onely vpon the land,
for this, that this is a rent going out of the
land, which is rent secke. For if the feoffee is
once seised of his rent, and after hee commeth
vpon the land &c. and the rent is denyed him
&c. he may haue an Assise de Nouel disseisin, for
though he may enter, because of the condition
broken, yet he may chuse, that is to say, to en-
ter, or to haue an Assise. And so is there diuer-
sitie, as to the tender of the rent that is going
out of the land, & of tender of an other rent
in grosse, which is not going out of any land.
And therefore it shall be sure and a good thing
for them that will make such Feoffement &
Mortgage, to put & set a speciall place where
the money shall be paid. And the more speciall
that it is put, the better it is for the feoffee.
As if A. infeoffe B. to haue to him and to his
heires vpon such condition, that if A. pay to
B. in the feast of Saint Michael the Archan-
gell next comming, in the Cathedrall Church
of S. Paul of London, within foure houres
next before the houre of none of ȳ same day,
at the rode loft of the North doore within the
same Church, or any other certain place set
in the same Church: that then it shal be lawfull
to the foresaid A. and to his heires to enter &c.
In such case he needeth not to seeke the feoffee
in any other place, but in the place compris-

n the Indenture, nor to be there more longer
me then the time specified in the same In-
enture, for to render or pay the money to the
offee.

Also in such case where the place of paiment
limitted, the feoffee is not bound to receiue
e payment in none other place, but in the
ace so limitted: But yet if he receiue the pai-
ent in any other place, that is good enough,
d as strong for the feoffor, as if the receit
d bin in the place so limitted &c.

Also in this case of feffement in Mortgage,
the feoffor pay the feoffee an horse, or a cup
silver, or a ring of gold, or any other such
ing in full satisfaction of the money, and the
her this receiueth, this is good enough, & as
ong as if he had receiued the summe of mo-
, though the horse, or any of the other things
not the twentieth part worth in value of
e summe of money, for this, that the other
th accepted it in plaine & full satisfaction.

Also if a man enfeoffe an other in fee vpon
ndition, that hee and his heires shall yeeld to
tranger and his heires a yerely rent of xx.s.
d if hee and his heires faile of payment of
s, that then it shall be lawfull to the feoffor
d to his heires to enter, this is a good con-
ion: And yet in this case, though such a
rely rent be called an annuell rent, this is
t properly a rent, for if it shalberent, it ought
bee rent seruice, rent charge, or rent secke,
d it is none of them, for if the stranger

were ſeiſed of this, and after it were to [illegible]
nyed, he ſhall neuer haue an Aſſiſe of this, [illegible]
this that it iſſueth not out of any landes, [illegible]
ſo the ſtraunger hath no remedy, if any [illegible]
yerely payment be behinde in this caſe, [illegible]
that the feoffour and his heires may [illegible]
and yet if the feoffour and his heires [illegible]
default of payment, then ſuch rent is [illegible]
euer. And ſo ſuch rent is but a payment [illegible]
the tenant and to his heires, that if they [illegible]
not pay this after the forme of the [illegible]
that they ſhal leeſe their land by [illegible]
feoffor or his heires, for default of [illegible]
And in this caſe it ſeemeth that the [illegible]
his heires ought to ſeeke the ſtranger [illegible]
heires if they be in England, becauſe [illegible]
place is limitted where the payment [illegible]
made, and becauſe that ſuch rent is [illegible]
out of any land &c.

And here note well two things, one is [illegible]
no rẽt that is properly ſaid rent, may be [illegible]
ned vpon any feoffement, gift or leaſe, [illegible]
to the feoffor or to the leſſour, or to their [illegible]
& in no maner may be reſerued to any [illegible]
perſon. But if two iointenants make [illegible]
by deede indented, reſeruing to the [illegible]
taine yerely rent, that is good enough [illegible]
to whom the rent is reſerued, for [illegible]
he is priuie to the leaſe and not a ſtranger [illegible]
this &c. The ſecond thing is, that no [illegible]
reentry (which is all one) may be reſerued [illegible]
giuen to any perſon, but onely to the [illegible]

to the donor, or the leſſor, or to their heires
and ſuch entrie may not be aliened nor graun-
ted to any perſon. For if a man let land to an
other for terme of life by Indenture, yeelding
the leſſor & to his heires certaine rent, & for
default of payment a reéntrie &c. if after the
leſſor by a deed grant the reuerſion of the land
to an other in fee, and the tenant for terme at
the attorneth &c. if the rent after be behind, the
grantée of the reuerſion may diſtraine for the
rent, for this that the rent is incident to the re-
uerſion, but he may not enter into the land and
put out the tenant as the leſſor might, or his
heires, if the reuerſion had been continued in
them &c. And in this caſe the entrie is taken
away at all times, for the grantée of the reuer-
ſion may not enter, Cauſa qua ſupra. See Stat.
of 11.H.8.ca.34. if the Leaſe be by deed indented,
and the leſſour nor his heires may not enter,
but if the leſſour may enter, then he ought to be
in his firſt eſtate &c. & that may not be, for this
that he hath put from him the reuerſion &c.
Alſo if there be Lord & tenant, & the tenant
made ſuch a leaſe for terme of life, yeelding to
the leſſour and to his heires, ſuch yeerely rent,
and for default of paiment a reéntrie &c. if after
the leſſour die without heire, during the eſtate
of the tenant for terme of life, by which the re-
uerſion commeth to the Lord by way of Eſ-
cheat, and after the rent of the tenant for terme
of life is behind; the Lord may diſtraine the
tenant for the rent behind, but hee may not

enter into the land by force of the condition &c. for this that he is not heire to the feoffor &c.

Also if land be graunted to a man for terme of yeres vpon condition, that if he pay to the grauntor within ij. yeres xl. Marks, that then he shal haue the lād to him & to his heirs &c. In this case if the grantee enter by force of the graunt, and after he payeth to the graunt xl. Marks within the ij. yeres, yet he hath nothing in the land, but for terme of ij. yeres, for this that no liuerie of seisin was to him made at the beginning, for if he had had franktenement and fee in this case, because he hath performed the condition, then should he haue franktenemēt by force of the first graunt before no liuery of seisin was made thereof, which should be against reason &c. But if the graunter had made liuery of seisin to the graunte by force of the graunt, then hath the graunte the franktenement and the fee vpon the performance of the same condition.

Also, if lands be granted to a man for terme of fiue yeres, vpon condition that he pay to the grauntor within the first ij. yeres xl. marks, that then he shall haue fee, or else but for terme of ij. yeres, & liuery of seisin is made to him by force of the graunt: Now he hath a fee simple conditionel &c. and if in this case the graunte pay not to the grauntor the xl. marks within the same ij. first yeres, then immediately after the same ij. yeres the fee & the franktenement is and shal be adiudged to the grantor, for the

that the grauntor may not after the two yeres incontinent enter vpon the grauntee, for this that the grauntée hath yet title by three yéeres to haue and occupie the land by force of the same graunt. And so for this, that the condition on part of the grauntée is broken, and the grauntor may not enter, the Law shal put the fée and franktenement in the grauntor: For if the grauntée in this case make wast, then after the breaking of the condition &c. and after the two yéeres the grauntor shal haue his writ of wast, and this is a good proofe that the reuersion is to him &c. But in such case of feoffements vpon condition where the feoffor may enter lawfully for the condition broken &c. There the feoffee hath the franktenement before the entrie &c.

Also, if a feoffement be made vpon such condition, that the feoffée shall giue the land to the feoffor, and to the wife of the feoffor, to haue and to hold to them and to the heires of their two bodies ingendred, and for default of such issue, to remaine to the right heires of the feoffour: In this case if the husband die lyuing the wife, before estate in the taile made to him, then ought the feoffée by the law to make estate to the wife, as like to the condition, and as like to the intent of the condition as he may make it, that is to say, to let the land to the wife for terme of life without impeachment of the wast, the remainder after her decease to the heires ingendred of the body of her

husband & hers, & for default of such issue, the remainder to the right heires of the husband. And the cause why the lease shall be made in this case to the woman sole without impeachment of waste, is for this, that the condition is, that the estate shal be made to the husband and his wife in taile. And if such estate had been made in the life of the husband, then after the death of her husband shee hath estate in the taile sole, which estate is without impeachment of waste, and so it is reason, that if after a man may make estate to the intent of the condition &c. that he shal make it &c. though that she cannot haue estate in the taile as shee might haue had, if the gift in the taile had been made to the husband, & to her in the life of her husband &c.

Also in this case if the husband and the wife had issue & die before the gift in the taile made vnto them &c. then ought the feoffee to make estate to the issue, and to the heires of the father and mother ingendred, and for default of such issue &c. the remainder to the right heires of the husband &c. And the same Law is in other cases semblable. And if such a feoffee will not make such estate when he is reasonably required by them that ought to haue estate by force of the condition &c. then may the feoffor and his heires enter &c.

Also, if a feoffement be made vpon condition, that the feoffee shall infeoffe many men, to haue and to hold, to them and to their heires for euer, and all they that ought to haue

haue estate, die before any estate made vnto them, then ought the feoffee to make the estate to the heires of him that furuiueth of them, to haue and to hold to him, and to the heires of him that furuiueth &c.

Also, if a feoffement be made vpon condition to enfeoffe an other, or to giue in the taile to an other &c. if the feoffee before the performing of the cõdition enfeoffe a strange person, or make a lease for terme of life, then may the feoffour and his heires enter &c. for this, that he hath disabled himselfe to performe the condition, insomuch that he made estate to an other &c. In such maner it is, if the feffée before the condition performed, let the same land to a stranger for terme of yeeres: In this case the feoffor or his heirs may enter &c. for this that the feoffee hath disabled himselfe to make estate of the tenements according to that, that was in the tenements when the estate thereof was made vnto him, for if he will make estate according to the Condition &c. then may the feoffee for terme of yeeres enter & put out him to whom the estate is made &c. and to occupie this during his terme. And many haue said, that if such a feffemẽt be made to a man sole vpon the same condition, and before that he hath performed the condition he taketh a wife, then the feoffor or his heire may incontinent enter, for this that if hee haue made estate according to the condition, & after dieth, his wife shal be endowed, & may recouer her dowrie by a writ of

Dower &c. And ſo by taking of a wife, the tenements be put in other plite then they were at the time of the feoffement vpon condition, for this, that no ſuch woman was dowable, nor ſhould be endowed by the law &c.

In the ſame maner it is, if the feoffor charge the land by his deed of a rent charge before the performing of the condition, or be bound in a ſtatute Staple, or ſtatute Marchant, that in ſuch caſes, the feoffor & his heires may enter, Cauſa qua ſupra. If or whoſoeuer commeth to the tenements by the feoffement of the feoffe, then the tenements muſt be lyable, and be put in execution by force of the Statute aforeſaid. But when the feoffor or his heires, for the cauſes aforeſaid haue entred ſo as they ought, as it ſeemeth &c. Then al ſuch things that before ſuch entry may trouble or incumber the tenements ſo giuen vpon condition, as touching the ſame tenement be vtterly defeated &c.

Alſo, if a man make a deede of feoffement to an other, & in the deed is no condition &c. And when the feoffor will make to him liuery of ſeiſin by force of the ſame deed, he maketh liuery of ſeiſin vpon certaine conditions &c. In this caſe nothing of the tenements paſſeth by the deed, for this, that the condition is not compriſed in the deed, & the feoffement is of ſuch force as if no ſuch deed hath beene therof made &c.

Alſo if a feffement be made vpon ſuch condition, that the feoffee ſhall not giuen the land to any man, this condition is void, for ſith, that

when a man is infeoffed in landes or tenements, hee hath power to alien them to some person by the law. For if such condition should be good, then the condition putteth him out of all the power that the Law giueth, which should be against reason, and for this such condition is voide. But if the condition be such, that the feoffee shall not alien to one such, naming his name, or to any of his heires, or his issues &c. or such other like, the which condition taketh not away all the power of alienation of the feoffee &c. then such condition is good.

Also if tenements be giuen in the tayle vpon such condition, that the tenant in the tayle, nor his heires &c. shall not alien in fee, nor in tayle, nor for terme of an others life, but for their owne liues &c. such alienation and condition is good: And the cause is for this, that when he maketh such alienation and discontinuance, hee doth contrarie to the intent, for which the Statute of westminster the second was made, by which estatute, the estates in the tayle be ordeined, for it is proued by the words compriſed in the same estatute, that the intent of the making of the same estatute was, that the will of the donor in such cases should be obserued. And when tenant in the taile maketh such discontinuance, he doth the contrary to that &c. And also in estates in the tayle of any tenements when the reuersion of the fee simple is in an other person, when such discontinuance

tinuance is made, then the fee simple in the reuersion, or the fee simple in the remainder is discontinued, and for that that the tenant in the taile shall doe no such thing against right, such conditions are good, as is aforesaid &c.

Also a man may giue land in the taile vpon such condition, that if the tenant in the taile or his heires alien in fee, or in taile, or for terme of an others life &c. And also, that if all the issues comming of the tenãt in the taile be dead without issue, that then it shalbe lawfull to the donor and to his heires to enter &c. & by such way the right of the taile may be saued after such discontinuance to the issue in the tayle if there be any, so that by way of entry of the donor or of his heires, the taile shall not be defeated by such condition, and yet if the tenant in the taile in this case, or his heires make any discontinuance &c. hee in the reuersion or his heires after this that the taile is determined for default of issue &c. may enter into the lãd by force of the same condition, and shal not be driuen to sue a writ of Formedõ in the reuersion.

Also, a man may not plead in an action that estate was made in fee, in the taile, or for term of life vpon condition, but if he vouch a record thereof, or shew a writing vnder seale, proouing the same condition, for it is a common erudition and learning, that a man by pleading shall not defeat any estate of franktenemẽt by force of any such condition, vnles he shew the proofe of such condition in writing &c. except it be in some

ſome eſpeciall caſe, but of chattels reals, as of a leaſe made for terme of yeres, or of graunts of wards made by wardens in chiualry, and of ſuch other &c. a man may plead that ſuch gifts or graunts were made vpon condition &c. without ſhewing of any writing of condition. And in the ſame maner a man may do of gifts and graunts of chattels perſonels, and of contracts perſonels &c.

Alſo, though that a man in ſome action may not plead an action that toucheth and concerneth franktenement without ſhewing of writing thereof, as it is aforeſaid, yet a man may be holpen vpon ſuch condition by the verdict of xij. men taken at large in Aſſiſe of diſſeiſin, or in ſome other action where the Juſtices will take the verdict of the twelue Iurors at large. As put the caſe that a man ſeiſed of certaine land in fee, letteth the ſame land for terme of life without deede, vpon condition to yeeld to the leſſour a certaine rent, and for default of payment a reentrie &c. by force of which the leſſee is ſeiſed as of a franktenement, and after the rent is behinde, by which the leſſour entreth into the land, and after the leſſee arraigneth an Aſſiſe of Nouel diſſeiſin of the land againſt the leſſor, the which pleadeth that he doth no wrong, ne no diſſeiſin, and vpon this the Aſſiſe is taken.

In this caſe the Recognitors of the Aſſiſe may ſay and yeeld to the Juſtices their verdict at large vpon all the matter, as to ſay that the

defendant was seised, and so seised, let the same land to the plaintife for terme of his life, to yeild to the lessor such annuell rent payable at such a feast, & vpon such condition, that if the rent be behind at any such feast that it ought to be paied, that then it shall be lawfull to the lessor to enter &c. by force of which lease the plaintif was seised in his demeine as of freehold tenement, & after the rent was behind at such a feast, in such a yeere &c. for which the lessor entred into the land vpon the possession of the lessee, & prayeth the discretion of the Justices, if this be a disseisin done by the plaintif or not. And then for this that it appeareth to the Justices, that this was no disseisin done to the plaintife, insomuch that, that the entry of the lessor was lawful vpon him, & Justices ought to giue iudgement that the plaintife shall take nothing by his writ of Assise. And so in such case the lessor shall be holpen, & yet no writting was euer made of the condition, for as well as the Iurors may haue knowledge of the lease, in the same maner may they haue knowledge of the condition rehearsed in the lease. In the same maner it is of a feoffement in fee, or a gift in the taile vpon condition, though neuer writting were made therof &c. And as it is said of a verdict at large in Assise, in the same maner it is of a writ of Entre founded vpon disseisin, & in all other actions where the Justices will take a verdict at large, there where the verdict at large is made, the nature of the matter is

put

put in the issue. Also in such case where the Enquest may say their verdict at large, if they will take vpon them the knowledge of the law vpon the matter, they may say their verdict generall, as it is put in their charge, as in the case aforesaid, they may well say that the lessor disseised not the lessee if they will &c.

Also in the same case, if the case were such, that after this that the lessor hath entred for default of payment &c. that the lessee had entred vpon the lessor, and him disseised: In this case if the lessor arraigneth an Assise against the lessee, the lessee may barre him of his Assise, for he may plead against him in barre, how the lessor that is plaintife made a lease to the defendant for terme of life, saving the reuersion to the plaintife, the which is a good plea in barre, insomuch that he knowledgeth the reuersion to be to the plaintife, and in this case he hath no matter to helpe him, but the condition made vpon the lease, and that he may not plead, for that he hath no writing, and insomuch that he may not answere to the barre, he shall be barred. And so in this case ye may see, that a man is seised, and he shall haue Assise, and yet if the lessee be plaintife, and the lessor defendant, he shall barre the lessee by verdict of the assise. But in this case where the lessee is defendant, if he will not plead the said plea in barre, but plead no wrong ne disseisin, then the lessor shal recouer by Assise, Causa qua supra.

Also because such conditions be most com-

monly

monly put & specified in deedes indented, some little thing shall be said here (to thee my sonne) of Indētures, & of a deed Poll conteining conditions. And it is to wit, that if the indēture be bipartite, or tripartite, or quadripartite, all the parts of the Indenture be but one deede in the Law, & euery part of the Indenture is of him self of as great force and effect, as all the parts together. And the making of Indentures is in ij. maners. One is to make them in the third person, an other maner is to make them in the first person. The making of the third person is as in such forme. This Indenture made between A. of B. of the one part, & C. of D. of the other part, witnesseth, that the foresaid A. of B. hath giuen & granted, & by this present deed indēted, hath cōfirmed to the foresaid C. of D. such land, To haue &c. vpon the condition &c. In witnes whereof the parties before said interchangeably haue put to their seales: Or else thus. In witnes wherof to ẏ one part of this indēture remaining with the said C. of D, the foresaid A. of B. hath put to his seale, & to the other part of the said Indenture remayning with the said A. of B, the said C. of D. hath put to his seal, giuen &c. Such Indētures are called indētures made in the third person, for this that the verbes be in the third person, and such forme of indēture is the more sure making, for that it is more cōmonly vsed. The making of Indētures in the first person is of such forme. To all true Christian people to whom this

present writing indented shall come, I. of W. greeting in our Lord euerlasting. Know ye me to haue giuen & graunted, and by this my present deed indented to haue confirmed to C. of D. such land &c. Or els thus: Know all men that be present, and them that be to come, that I A. of B. haue giuen & granted, and by this my present deed indented haue cõfirmed to C. of D. such land &c. to haue &c. vpon the condition following: In witnes whereof aswel I the said A. of B. as ỹ foresaid C. of D. to these Indentures interchangeably haue put to our seales: or els thus. In witnes whereof to one part of this Indẽture I haue put to him seale, and to the other part of the same Indẽture the foresaid C. of D. hath put to his seale &c.

And it seemeth that such an Indẽture made in the first person, is as good in the law as the Indenture made in the third person, when both parties haue thereto put their seales, for in the Indenture made in the third person or in the first person, if mention be made that the grantor hath set his seale onely, & not the grantée, then is the Indenture only the deed of the grauntor. But where mention is made that the grauntée hath set his seale to the Indenture &c. then is the Indenture aswell the deed of the grauntor, as the deed of the grauntée, & thus it is the deed of both, and also euery part of the Indenture is the deed of both parties in such case &c.

Also if estate be made by Indenture to a man

man for terme of his life, the remainder to an other in fée vpon Condition &c. and if the tenant for terme of life hath set his seale to one part of the Indenture, and after dyeth, and he in the remainder &c. entreth by force of his remainder, in this case he is holden to perform all the conditions comprised within the Indenture, as the tenant for terme of life ought to doe in his life, and yet he in the remainder neuer sealed any part of the Indenture: But the cause is, that inasmuch that he entreth and agreeth to haue the land by force of the Indenture, he is holden to perform the condition within the Indenture, if he will haue the land &c.

Also if a feoffement be made by déede Poll vpon condition &c. And for this that the condition is not performed, the feoffor entreth and happeth the possession of the déed Poll, & the iessée bring an action of that entry against the feoffor, it hath beene a question, if the feoffor may plead the Condition &c. by the déede Poll against the feoffée: And some haue said nay, inasmuch that it seemeth vnto them, that a déed Poll, and the propertie of the same déed appertaineth to him to whom the déede is made, and not to him that made the déede, and inasmuch that such a déede appertayneth not to the feoffor, it seemeth to them that he may not plead this déed &c. And other haue said the contrary, and haue shewed diuers causes. One is, if the case be such, that in the action

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betweene them the feoffee plead the same deed, & shew this to the court: In this case insomuch that the deed is in the court, the feoffor may shew to the court, how in the deed be diuers conditions to be performed of the part of the feoffee, and for this that they be not performed, he entred &c. and thereto he shal be receiued: by the same reason when the feoffor hath the deed in hand, & sheweth it to the court, he shal be wel receiued to plead of this &c. and namely when the feoffor is priuie to the deed, for he ought to be priuie to the deed when he made the deed.

Also if two men make or doe a trespas to an other, the which releaseth to one of them by his deed all actions personels, and notwithstanding hee sueth an action of Trespasse against the other, the defendant may well shew that the Trespas was done by him & an other his fellow, and that the plaintife by the deed that he shewed forth releaseth to his fellow all actions personels, and yet such deed appertaineth to his fellow, and not vnto him, but for this that he may haue aduantage by the deed, if hee will shew the deed to the Court, he may well plead &c. Therefore by the same reason in the other case, when the feoffor ought to haue aduantage by the condition comprised within the deed Doll.

Also, if the feoffee gaue or graunted the deed Doll to the feoffor, such graunt shall be good, and then the deed, and the property of the deed appertaineth to the feoffee. And when the

feoffor hath the deed in hand, and pleadeth it to the court, it shall be rather vnderstood that hee came to the deed by a lawfull meane then by a tortious meane. And so it seemeth that he may wel plead such a deed Poll, that comprehendeth condition &c. if he haue the deed in hand &c. Ideo semper quære de dubijs, quia per rationes peruenitur ad legit rationem.

Estates that men haue vpon condition in the Law, be such estates that haue condition in the Law annexed to them, though it be not specified in writing, so as a man graunt by his deed to an other the office of a Parkership of a Parke, to haue and to occupie the same office for terme of his life, the estate that hee hath in the office, is vpon condition in the Law, that is to say, that the Parker well and truely shal keepe the Parke, & doe that, that to the office appertaineth to doe: or otherwise, that it shall be lawfull to the grauntor and to his heires to put him out, and to graunt that to an other if he wil &c. And such condition as is vnderstood by the law to be annexed to some thing, is as strong as if the condition were set or put in writing. In the same maner it is of graunts of offices of Stewards, Constables, Bedels, Bailifes, and other officers. But if such office be graunted to a man to haue & to occupie by him or by his deputie, then if the office be occupied by him or by his deputie, as it ought by the Law to be occupied, this sufficeth for him, or els the grantor or his heires may put him out

as

as is afore ſaid.

Alſo, eſtates of lands or tenements may be vpon condition in the Law, though that vpon the eſtate made, there was no reherſall made of the condition: As put the caſe that a leaſe be made to the huſband and his wife, to haue & to hold to them during the couerture betweene them, in this caſe they haue eſtate for terme of their two liues vpon condition in the law, that is to ſay, if one of thē die, or if diuorce be made betweēn them, that then it ſhal be lawful to the leſſor & his heires to enter &c. & that they haue eſtate for terme of their two liues, it is proued thus: Euery man that hath eſtate of franktenement in any lands or tenements, either he hath eſtate in fee, or in fee taile, or for terme of life, or for terme of an others life, & yet by ſuch leaſe they haue franktenement, but they haue not by the graunt, fee, nor taile, nor for terme of an others life, Ergo they haue eſtate for terme of their two liues, but this is vpon condition in the law in forme afore ſaid. And in this caſe if they make waſt, the leſſor ſhall haue againſt them a writ of waſt, ſuppoſing by his writ Quod tenēt ad terminū vitę &c. but in his plee he ſhall declare how & in what maner the leaſe was made. In the ſame maner it is, if an Abbot make a leaſe to a man, to haue & to hold during the time that the leſſor is Abbot: In this caſe the leſſee hath eſtate for terme of his owne life: but this is vpō condition in law, that is to ſay, that if ꝑ Abbot die, or reſign, or be depoſed,

it shall be lawfull to his successors to enter &c.

Also, a man may see in the booke of Assise, An 38.E.3. a plee of assise in this forme that ensueth. Assise of Nouel disseisin was sometime brought against one B. that pleadeth to the assise, & was found by verdict that the auncestor of the plaintife demised the tenemẽts to be sold by ỹ defendant that was his executor to make distribution of the money for his soule: And it was found, that a man after the death of the testator tendred him a certain summe of money for the tenements, but not to the value, & that the executor after helde the tenements in his owne hand by two yeare, to the intent to have sold the tenements more dearer to some other. And it was found that he had all the issues after taken the profits of the tenements to his owne vse, without any thing doing for ỹ soule of the dead. ¶Mombray, the executor in such case is holden by the law to make such sale as soone as he may after the death of the testator, and it is found that he refused to make the sale, & so the default was in him: And also by force of the demise he was holden to haue put all the profits of the said tenements to the vse of the dead, and it is found that he hath taken them to his owne vse, and so an other default is in him, wherefore it was aiudged that the plaintife should recouer &c. And so it appeareth by ỹ said iudgemẽt, that by force of the said deuise the executor had none estate or power in the tenements, but vpon condition in the law &c.

And

And in such cases it needeth not to haue shewed any deed, rehersing the conditions &c. Ex paucis dictis intendere plurima possis. More shal be said of cõditions in the chapter of Discents that take away entrie, & in the chapter of Releases, & in the chapter of Discontinuance.

Discents.

DIscents that take away entries be in iij. maners: that is to say, where the discent is in fée, or in fée taile. Discent in fée that taketh away entrie is, if a man seised of certein lands or tenements, is disseised, & the disseisor hath issue and dieth of such estate seised: Now the tenements discend to the issue of the disseisor by course of the Law, as heire vnto him. And for this that the Law putteth the lands or tenements vpon the issue, and the issue commeth to the tenements by course of the Law, and not of his owne deede, the entrie of the disseisee is taken away, & he is thereof put to his writ of Entre vpon disseisin against the heire of the disseisor to recouer the land.

Discent in the tayle that taketh away entrie is, if a man be disseised, and the disseisor giueth the same land to an other in the tayle, and the tenant in the taile hath issue and dyeth seised of such estate, and the issue entreth, in this case the entrie of the disseisee is taken away, and he is put to sue against the issue of the tenant in the taile, a writ of Entrie vpon

disseisin &c.

And note well, that in such discents that take away entries, it behoueth that a man be seised in his demesne as of fee, or of fee taile, by dying seised for terme of life, or for terme of an others life, shal neuer take away the entrie &c.

Also, a discent of reuersion, or of remainder shall neuer take away entrie &c. so that in such cases that take away entries by force of discents, it behoueth that he that died seised haue fee & franktenement at the time of his dying, or else such discent taketh not away entrie.

Also as it is said of discents that discēd to the issue of him that dieth seised &c. the same law where they haue no issue, but the tenemēts discēd to ꝑ brother, or to the sister, or to the vncle, or to some other cosin of him, ꝑ dieth seised &c.

Also, if there be Lord and tenant, and the tenant be disseised, and the disseisor alieneth to an other in fee, & the alienee dyeth without heire, and the Lord entreth as in his eschete: In this case the disseisee may enter vpon the Lord, for this, that the Lord commeth not to the land by discent, but by escheat.

Also, if a man seised of certaine land in fee, or in fee taile vpon cōdition to yeeld certain rent, or vpon other condition, though that such tenant seised in fee, or in fee taile, die seised, yet if ꝑ cōdition be broken in their life, or after their decease &c. this taketh not away the entrie of the feoffor, nor of the donor, or of their heirs, for this that the tenancy is charged with the condition,

dition, and the estate of the tenancie is condicionall in whose hands soeuer the tenancy shall come &c.

Also, if such a tenant vpon condition be disseised, & the disseisor die therof seised, & the land discẽdeth to ỹ heire of ỹ disseisor, now the entry of the tenant vpon conditiõ that was disseised is taken away, but if the condition be broken &c. then may the feoffor or the donor ỹ made the estate or their heires enter &c. Causa qua supra.

Also, if a disseisor die seised, & his heires entur &c. the which endoweth the wife of the disseisor of the third part of the tenements, in this case, as to the third that is assigned to the wife in dower, incontinent anon after that the wife entreth and hath possession of the same third part, the disseisée may lawfully enter vpon the possession of his wife in the same third part. And the cause is for this that when the wife hath her dower she shalbe adiudged in rather immediatly by her husband then by the heire, & so as to the franktenement of the same third part, the discent is defeated. And so yée may sée how before the dowment the disseisée might not enter in any part &c. and after the dowment he may enter vpon the wife, and yet hée may not enter vpon the other two partes that the heire of the disseisor hath by discent &c.

Also, if a woman be seysed of land in fée, whereof I haue right and title to enter, if the woman take an husband and haue issue betweéne them, and after the wife dieth seised,

and after that the husband dieth, and the issue entreth &c. in this case I may enter upon the possession of the issue, for this that the issue commeth not to the tenements immediately by discent after the death of his mother. Ann. 9. H. 6. fol. 24. it is holden contrarie.

Also, if a disseisor infeoffe his father, & the father entreth and dieth of such estate seised by which the tenements discend to the disseisee, as to the sonne and heire &c. In this case the disseisee may well enter upon the disseisor, notwithstanding the discent, for this, that as in the disseisin, the disseisor shalbe adiudged in but as the disseisor, notwithstanding the discent.

Also, if a man seised of certeine land in his demeane as of fee, hath issue two sonnes & dyeth, & the ponger sonne entreth by abatement in the land, the which hath issue, and of this dyeth seised, and the tenements discend to the issue, and the issue entreth into the land: In this case the elder sonne or his heires may enter by the Law upon the issue of the ponger sonne, notwithstanding the discent, for this, that when the ponger sonne abated in the land after the death of his father, before any entrie of the elder, the law intendeth that he entreth in clayming as heire vnto his father, and for this that the elder brother clayneth by the same title, that is to say, as heire vnto his father, he & his heires may enter vpon the issue of the ponger brother, notwithstanding the discent &c. for this, that they claime by one title.

title. And in the same maner it shal be if there be many discents from one issue to an other issue of the yonger sonne &c. But in such case, if the father were seised of certain lands in fee, and hath issue two sonnes and dieth, and the elder sonne entreth and is seised &c. And after the yonger sonne disseiseth him, by which disseisin he is seised of fee, and hath issue, and of such estate dyeth seised, then the elder brother may not enter, but is put to his writ of Entre vpon disseisin for to recouer the land. And the cause is for this that the yonger brother commeth to the tenements by a wrong disseisin made vnto his elder brother, & for that wrong the law may not intend that hee claymeth as heire to his father, no more then if a straunge person had disseised the elder brother that neuer had any title &c. And so may yee see the diuersitie, where the yonger brother entreth after the death of his father, before any entrie made by the elder brother in such case &c. And where the elder brother entreth after the death of his father, & is disseised by the yonger brother &c. In the same maner if a man seised of certain land in fee, hath issue two daughters, & dieth, & the elder daughter entreth in the land, claiming all the land to her, and thereof onely taketh the profits, and hath issue & dieth seised, by which her issue entreth, which issue hath issue and dieth seised, and the second issue entreth &c. Et sic vltra, yet the yonger daughter and her issue, as to the halfe may enter vpon

every

euery issue of the elder daughter, notwithstanding such discent, for this that they claime by one seise title &c. But in such case if both the sisters come into the land to enter after the death of their father, & thereof were seised, and after the elder sister therof disseised the ponger sister of that, that to her belongeth, & thereof is seised in fée, & hath issue, & of such estate dyeth seised, by which the tenements discend to the issue of the elder sister, then the ponger sister & her heires may not enter &c. Causa qua supra.

Also, if a man seised of certaine land hath issue two sonnes, and the elder brother is bastard, and the ponger brother Mulier and the father dyeth, and the bastard entreth and claymeth as heire vnto his father, and occupyeth the land all his life without any entry made vpon him by the Mulier, and the bastard hath issue and dieth of such estate seised in fée, and the land discendeth to his issue, and his issue entreth &c. in this case the Mulier is without remedy, for he may not enter, nor he shall haue no action for to recouer the land, for this that it is an auncient law in such case vsed. But it hath beene an opinion of some men, that that shall be vnderstood where the father hath a sonne a bastard by a woman, & after hée wedeth the same woman, and after the espousall hee hath issue by the same woman a sonne or a daughter mulier, & the father dieth &c. if such a bastard enter &c. and hath issue, and dyeth seised &c. Then shall the issue of such a bastard

haue

haue the land clérely to him as it is afore-said &c. And not any other bastard borne of the mother that was not espoused to his Father, and this is a good and reasonable opinion: For such a bastard borne before the espousels solempnized betwéene his father and his mother by the Law of holy Church is Mulier, though that by the Law of the land he is a bastard borne, and so he hath colour of entrie as heire to his father, for this that he is by one law Mulier, that is to say, by the Law of holy Church. But otherwise it is of a bastard that hath no manner of colour to enter as heire, insomuch that he may not in no law be said Mulier &c. for such a bastard is said Quasi nullius filius: But in such case aforesaid, where the bastard entreth after the death of his Father, and the Mulier putteth him out, and after the Bastard disseiseth the Mulier, and hath issue, and dyeth seised, and the issue entreth, then the Mulier may haue a writ of Entre vpon disseisin against the issue of the bastard, and recouer the land &c. And so may yée sée the diuersitie where such a Bastard continueth his possession all his lyfe wythout any interruption, and where the Mulier entreth and interrupted the possession of such a Bastard.

Also, if a child within age haue title & cause to enter into any landes or tenements vpon an other that is seised in fée, or in fée taile of the same landes or tenements, if such a man that

that is so seised die of such estate so seised, and the tenements discend to his issue, during the time that the childe is within age, such discent shall not tolle the entrie of the childe, but he may enter vpon the issue that is in by discent &c. for this that no laches shall be adiudged in a child within age in such case &c.

Also, if the husband and his wife, as in right of the wife haue title and right to enter in the tenements that an other hath in fee, or in fe tatle, & such a tenant dyeth seised &c. In such case the entrie of the husband is taken away vpon the heire that is in by discent. But if the husband die, then the wife may wel enter vpon the issue by discent, for this that the laches of the husband shall not turne to the wife & to her heires in preiudice nor in damage in such case, but that the wife & her heires may well enter where such discent is during the couerture &c.

Also, if a man that is not of whole minde, that is to say in Latin, Qui non est compos mentis, hath cause to enter in any such tenements, if such discent vt supra be had in his life during the time that he was out of his mind, and after die, his heires may well enter vpon him that is in by discent. And in this may ye see a case that ỹ heire may enter, & yet his ancestor that had the same title may not enter, for he that was out of his mind at the time of such discent, if he will enter after such a discent, if an action vpon this be sued against him, he hath nothing for him to plead, or to help him, but to

say

say that he was out of mind at the time of such discent &c. And he shall not be received to say this, for this that no man of full age shall be received in any plee by the law to disable his owne person. But the heire may well disable the person of his auncestor for aduantage of the heire in such case, for this, that no laches may be adiudged by ꝑ law in him that hath no discretion in such case. And if such a man out of his mind make a feoffement &c. he may not enter, ne haue a writ called Dum non fuit cõpos mentis &c. Causa qua supra. But after his death his heir may well enter, or haue the same writ Dũ nõ fuit cõpos mẽtis at his election &c.

Also, if I be disseised by a child within age that alieneth to an other in fee, and the alienee dyeth seised, and the tenements discend to his heire, the child being within age, mine entrie is taken away. But if the child within age enter vpon the heire that is in by discent, as he well may, for this that the discent was during his nonage, then I may well enter vpon the disseisor, for this, that by his entrie he hath defeated and annulled the discent.

And in the same maner it is, where I am disseised, & the disseisor maketh a feoffement in fee vpon condition &c. & the feoffee dieth of such estate seised &c. I may not enter vpon the heire of the feoffee: But if the condition be broken, so that by such cause the feoffor entreth vpon the heir, now may I well enter, for this that when the feoffor or his heires enter for the condition broken,

broken, the discent is vtterly defeated.

Also, if I be disseised, and the disseisor hath issue and entreth into Religion, by force of which the landes discend to his issue, in this case I may well enter vpon the issue, and yet there was a discent: But for this that such discent commeth to the issue by the fathers deed, that is to say, for this that he entred into religion &c. and his discent commeth not to him by the deed of God, that is to say, by death &c. mine entrie is congeable and lawfull, for if I arraigne an Assise of Nouel disseisin against my disseisor, though he after enter into Religion, this shall not abate my writ: But my writ this notwithstanding, shall abide in his force and strength, & my recouery against him shall be good. By the same reason the discent that came to his issue by his own deeds may not put me from mine entrie &c.

Also, if I let to a man certaine landes for terme of xx. yeares, and an other disseiseth me, and putteth out the termor, and dyeth seised, and the tenements discend vpon his heire, I may not enter, and yet the lesse for terme of yeeres may well enter, for this that by his entrie he putteth not out the heire that is in by discent from the franktenement that vnto him discended, but onely claymeth to haue the tenements for terme of yeeres, the which is no expulling of the franktenement of the heire that is in by discent. But otherwise it is where my tenant for terme of life is disseised

&c.

&c. Causa qua supra.

Also, it is said that if a man be seised of tenements in fée by occupation in time of warre, & dieth thereof seysed in time of warre, & the tenements discend to his heire, such discent putteth out no man of his entry. And of this a mã may see a plée in a writ of Ayel; An. 7. E. 2.

Also that no dying seised (where all the tenements come to an other by succession) shall take away the entry of any person &c. For of Prelates, Abbots, Priors, Deanes, or Parsons of Churches &c. though that ther were 20. successors, this putteth no man from his entry &c. More shall be said of discents in the Chapter of continuall claime &c. See statute 32. H. 8. cap. 33.

Continuall claime.

COntinuall claime is, where a man hath right & title to enter in any landes or tenements wherof an other is seised in fée, or in fée taile, if hee that hath title to enter make continuall claime to the lands & tenements, before the dying seised of him that holdeth the tenements: Then though such a tenant die therof seysed, and the landes and tenements discend to his heire, yet may hee that hath made such claime, or his heires, enter into the landes and tenements discended, because of the continual claime made, notwithstanding such discent. As in case a man be disseised, and the disseisée ma-

maketh continuall claime to the tenements in the life of the disseisor, though the disseisy die seised in fee, and the land discendeth vnto his heires, yet may the disseisée enter vpon the possession of the heire, notwithstanding such discent.

In the same manet it is, if tenant for terme of life alien in fée, he in the reuersion, or he in the remainder may enter vpon the alienée. And if such alienée die seised of such estate without continuall claime made to the tenements before the dying seised of the alienée, & the tenements because of the dying seised of the alienée discend vnto the heire of the alienée, then may not he in the reuersion, nor he in the remainder enter. But if he in the reuersion, or he in the remainder that hath cause to enter vpon the alienée, made continuall claime to the tenements before the dying seised of the alienée, then such a man may enter after the death of the alienée, aswell as he might in his life &c.

Also, if landes be let vnto a man for terme of his life, the remainder vnto an other for terme of life, the remainder vnto the third in fée, if the tenant for terme of life alien to an other in fée, and he in the remainder for terme of life maketh continuall claime vnto the land before the dying seised of the alienée, & after the alienée dyeth &c. and after he in the remainder for terme of life dyeth before any entry made by him: In this case hée in the remainder in fée may enter vpon the heire of the alienée,

because

because of continuall claime made by him that had ȳ remainder for terme of life, for this that such right that he hath to enter, shall goe and remaine to him in the remainder after him, insomuch that he in the remainder in fée may not enter vpon the alienée in fée during the life of him in the remainder for terme of life, and because he might not make continuall claime, for none may make continuall claime but when he hath title to enter. But it is to be shewed to thée my child how & in what maner continuall claime shalbe made, & to learne this, 3. thinges there be to be vnderstood. The first thing is, if a man haue cause to haue any landes or tenements in diuers townes within one Shire, if he enter in any parcell of the landes or tenements that be in one towne, in the name of all the lands or tenements to which he hath right to enter within al the towns in the same shire, by such entry he hath as good possessiō & seisin of such lands or tenements wherof he hath title to enter, as if he had entred into euery parcell, and this séemeth great reason, for if a man will enfeffe an other without déed, of certaine lands or tenements ȳ he hath in many townes within one shire, & he will deliuer seisin to the feoffée of parcell of the tenements within one towne in the name of all the lands & tenemōts that he hath in ȳ same towne, & in all the other townes &c. al the said tenements &c. shall passe by force of the said liuerie of seisin to him to whom such feoffement in such maner is made:

And yet he to whō such liuery of seisin is made hath no right to all the lands & tenemēts in all the townes, but by reason of the liuery of seisin made of parcel of the lāds or tenements in one towne, a multo fortiori it seemeth good reason that when a man hath title to enter into lands or tenemēts in diuers towns within one shire before any entry by him made, that by the entrie of him made in parcell of the tenemēts in one towne, in the name of all the lands & tenements to the which he hath title to enter within the same shire, this is a seisin of all in him, & by such entry hee hath possession and seisin in deed, as if he had entred into euery parcell &c.

The second is to vnderstand, that if a man hath title to enter into any lands or tenemēts, if he dare not enter into the same landes or tenements, nor in any parcell therof for doubt of beating, or for doubt of mayming, or for doubt of both, if he go & approch as nigh ẏ tenemēts as he dare for such doubt, & claime by wordes the tenements to be his, incontinent by such claime he hath a possession & seisin in the tenements, aswel as if he had entred indeed though he had neuer possessiō or seisin of the same lāds or tenements before the said claime. And that the law is such, it is wel proued by a plee of an assise in the booke of Assises, An. 38. E. 3. P. 23. the tenor of which ensueth in this forme.

In the county of Dorset before the Justices it was found by verdict of Assise, that the plaintife which had right by discent of heritage,

age, to haue the tenements put in plaint at the time of the death of his auncestor, which was dwelling in the towne where the tenements were, and by word claymeth the tenements among his neighbors, but for doubt of death he durst not approch vnto the tenemēts, bringeth an Assise, & vpon the matter found, it was awarded that he should recouer.

The third thing is, to vnderstand within what time, and by what time the claim that is said cōtinual claime shall serue & help him that made the claime & his heire. And as to this it is to wit, that he that hath title to enter, when he wil make his claime, if he dare approch vnto the land, then it behoueth him to goe vnto the land, or to parcell of it, & make his claime: And if he dare not approch vnto the land for dread of beating, mayming, or death, then it behoueth him to goe, & to approch as nigh as he dare toward the land, or parcell therof, & make his claim. And if his aduersary that occupieth the land die seised in fée, or in fée taile, within a yére & a day after such claime made, by which the tenements discend vnto his sonne, as heire vnto him, yet may he that made the claime, enter vpon the possession of the heires. But in this case after ꝯ yere & the day that such claim was made, if none other claime be made, if the father then die seised the morrow after the yere & the day, or at an other day after &c. then may not he that made ꝯ claim enter. And therfore if he that made ꝯ claim wil be sure alway that his

entrie shall not be taken away by such discent, it behoueth him within the yere and the day after the first claime, to make an other claime, in the forme aforesaid. And within the yere & the day after the second claime, to make the 3. claime in the same maner, & within the yere & the day after the third claime, to make another claime &c. that is to say, to make another claim within euery yere & day next after euery claim made during the life of his aduersary, & then at what time that his aduersary die, his entrie shall not be taken away by discent. And such claime made in such maner is most commonly taken and called continuall claime of him that made the claime. But yet in case aforesaid, where his aduersary dieth within the yere and the day next after the first claime, this is in the law a continual claime, insomuch that his aduersary died within the yere & the day after the same claime, for it is no need for him that made the claime, to make any other claime, but at what time he will within the same yere & the day &c. Also if his aduersary be disseised within the yere & day after the claime, & the disseisor dieth therof seised within the yere and the day &c. this dying seised shall not hurt him that made the claime, but that he may enter &c. For whosoeuer he be that died seised within the yere & the day after such claime, that shall not hurt him that made the claime, but that he may enter though there were many dyings seised, and many discents within the yere and the day &c.

Also

Also, if a man be disseised, and the disseisor die seised within the yeare & the day next after the disseisin done, whereby the tenements discend to his heire, in this case the entrie of the disseisee is taken away, for the yeare & the day that should helpe the disseisee in such case &c. shall not be taken from the time of the title of entrie growen vnto him, but only from ỹ time of the claime by him made in time aforesaid, & for that cause it shall be good for such a disseisee for to make his claime &c. in as short time as he may after the disseisin &c.

Also, if such a disseisor occupy the land by xl. yeres without any claime made by the disseisee &c. & the disseisee by little space before the death of the disseisor make claime in the forme aforesaid, if so it fortune that within a yeare & a day after such claime the disseisor die seised &c. the entrie of the disseisee is congeable, & for this it shalbe good for such a man that made no claime that hath title to enter &c. when he heareth that his aduersary lieth sick to make his claime &c.

Also, as it is said in the cases put before, where a man hath title to enter because of a disseisin &c. The same Law is where a man hath right to enter because of the title &c.

Also in the said Presidents may yee know my childe two things. One is, where a man hath title to enter vpon any tenant in tayle, if he make any such claime vnto the land &c. then is the state of the taile defeated, for that claime is as an entrie made by him, and is of the same

effect in the law, as if he were vpon the same tenements, and had entred in the same tenements, as is aforesaid. And then when the tenant in taile immediatly after such claime continueth his occupation in the tenements, this is a disseisin made of the same tenements vnto him that made the claime, Et sic per consequens, the tenant then hath fée simple.

The second thing is, that as oft as he that hath right to enter maketh such claime, & notwithstãding his aduersary continueth his occupation &c. so oft the aduersary doth wrong & disseisin to him that made the claime. And for this cause so oft may he that made the same claime for euery such wrong & disseisin made vnto him, haue a writ of trespas, Quare clausum suũ fregit &c. to recouer his damages &c. or he may haue a writ vpon the statute of king Rich. the 2. made the 5. yere of his raigne, supposing by his writ that his aduersary hath entred into the lands or tenements of him that made the claime, where his entrie was not giuen by the law &c. & by such action he shall recouer his damages &c. And if the case be such that the aduersary occupy the tenements with force & armes, or with a multitude of people at the time of such claime &c. Then may he that made the claim, for euery such time haue a writ of forcible entry, & recouer his treble damages.

Also here it is to sée, if the seruant of a man that hath title of entrie, may by the commandement of his Master make continuall claime for

for his Master in his name, & it seemeth that in some cases he might do this, for if hee by his commandement come to any parcel of the land and there maketh claime &c. in the name of his Master, this claime is good for his Master. for this that he hath done all that it behoueth his Master to doe in such case &c.

Also if a Master say vnto his seruant that he dare not go into the lād, nor into any parcel of the land for to make any clayme &c. and dare not approch more nigh vnto ȳ same land, saue to such a place called Dale, & commandeth his seruāt to go to the same place of Dale, & there to make a claime for him &c. if the seruant doe &c. this seemeth as good claime for his master, as if he had been there in his owne person, for that the seruant did all that his Master durst doe, and ought to doe by the law in such case.

Also, if a man be so sicke, or so lame that hee may not in any maner come to the land, nor to any parcell of the same. or if there be a recluse that may not because of his order goe out of his house &c. if such a manner of person commaund his seruant to goe and make claime for him &c. and the seuant dare not go to the land, nor to any parcell thereof for doubt of beating, mayme, or death, and for that cause such seruant commeth as nigh to the land as hee dare for such dread, and maketh his claime &c. for his Master, it seemeth that such claime for his Master, is good and strong in law, for els his Master should bee in too great mischiefe, for

it may well be that such a person that is sicke, or lame, or recluse, cannot find any seruant that dare goe vnto the land, nor to any parcel of it to make the claime for him &c. But if the Master of such a seruant be in good health and may & dare well to goe to the tenements, or to parcell of it to make his claime for him &c. if such a Master commaund his seruant to goe to some parcell of the land and make claime for him &c. And when the seruant is going to do the commaundement of his Master, he heareth by the way such thinges that hee dare not goe to any parcell of the land for to make any clayme in his Master, & for that cause he goeth as nigh vnto the land as hee dare for doubt of death, and there he maketh claime for his Master in the name of his Master &c. It seemeth that the doubt in the law in such case shalbe if such claime auaile his Master or not, for this that the seruant did not all that his Master at the time of commaundement durst to haue done.

Also some haue said, that where a man is in prison and is disseised, and the disseisor dyeth seised, during the time that the disseisée is in prison, by which ꝑ tenements discended to the heire of the disseisor, they haue said that this shall not hurt the disseisée that is in prison, but that hee may well enter notwithstanding such discent, for this that he may not make cõtinual claime whẽ he was in prison. And also if such a one that is in prison be outlawed in an actiõ of Det or Trespas, or in appeal of robbery &c.

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he shall reuerse such outlawrie by writ of Erroꝛ &c. because he was in prison at the time of the outlawrie against him pronounced.

Also if a recouery be had by default against such a one that is in prison, hee shall auoide the iudgement by a writ of Erroꝛ, foꝛ this that he was in prison at the time of such default made &c. and because that such matters of recoꝛde shall not hurt them that be in prison, but that it shalbe reuersed &c. a multo fortiori, It seemeth that a matter in deed, that is to say, such discent had when he was in prison shall not hurt him &c. specially foꝛ this, that he may not goe out of prison to make continuall claime &c.

And in the same manner it seemeth to them where a man is out of the realme in the kings seruices foꝛ busines of the Realme, & if a man be disseised when he is in the seruice of ꝑ king, that such discent shall not hurt the disseisoꝛ, but foꝛ this that hee might not make continuall claime &c. it seemeth vnto them, that when hee commeth againe into England, hee may enter againe vpon the heire of the disseisoꝛ &c. Foꝛ such a man shall reuerse an outlawrie that is pronounced against him during the time that hee is in seruice &c. Ergo a multo fortiori hee shall haue aide by the law in the other case &c.

Also others haue said, that if a man be out of the Realme, though he be not in the kinges seruice, if such a man being out of the Realme be disseised of landes oꝛ tenements within the Realme and the disseisoꝛ die seised &c. the dis-

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seisée being out of the Realme, it séemeth vnto them, that when the disseisée commeth into the Realme, that he may well enter vpon the heir of the disseisor &c. and this séemeth vnto them for two causes: One is, that hée that is out of the realme, may not haue knowledge of the disseisin made vnto him by vnderstanding of the law, no more then that a thing done out of the Realme may be tryed within this Realme by the oath of xij. men, and to compell such a man to make continual claime, which by the vnderstanding of the Law can haue no knowledge or cognisance of such disseisin made or done, this shalbe inconuenient, namely when such a disseisin is done vnto him, when he was out of the Realme, and the dying seysed was done when he was out of the realme, for in such case he may not by possibility after the common presumption make no continuall claime: But otherwise it shalbe if the disseisée were within the realme at the time of the disseisin, or at the time of the dying seised of the disseisor &c. An other matter they alleadge for a proofe, that before the statute of K. E. the 3. made the 34. yere of his raigne, by which statute Monclaime is out &c. the law was such, that if a fine were leuied of certain lands or tenements, if any that was a stranger to the fine had right to haue & to recouer the same lands or tenements, if hée came not and made his claime therof within a yere and a day next after the fine leuied, he shal be barred for euer, Quia dicebatur quod finis

finem

finē litibus imponebat. And that the law was such, it is proued by the statute of West. the 2. De donis condicionalibus, where it speaketh, if the fine be leuied of tenements giuen in the taile &c. Quod finis ipso iure sit nullus, nec habeant hæredes, aut illi ad quos spectat reuersio (licet plenæ ætatis fuerint, in Anglia, & extra prisona) necesse apponere clameū suum. So it is proued, that if a straunger that hath right into the tenemēts, if he were out of the Realm at the time of the fine leuied &c. shall haue no damage, though that such fine was matter of record: by greater reason it seemeth vnto them that a disseisin & discent that is matter in deed, shal not so greeue him that was disseised when he was out of the Realme at the time of that disseisin, and also at the time that the disseisor died seised &c. but that he may well enter notwithstanding such discent. Also inquire if a man be disseised, & he arraine an Assise against the disseisor, & the recognitors of the assise challenge for the plaintife, & the Justices of Assise will be aduised of their iudgements vntill the next assise &c. & in the mean season the disseisor dieth seised &c. yet the said suit of the assise shal be taken in law for the disseisee a continuall claim, insomuch that no default was in him &c.

Also inquire if an Abbot of a Monastery die, & during the time of vacation, a man wrongfully entreth in certaine parcels of land of the Monasterie, claiming the land vnto him and his heires, and of that estate dieth seised, and

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the land discended vnto his heires, and after that an Abbot is chosen, & made Abbot of the Monastery, a question is, if the Abbot may enter vpō the heire or not. And it seemeth to some that the Abbot may well enter in this case, for this that the Couent in time of vacation was no person able to make continual claime, for no more then be they person able to sue an action, no more be they person able to make continual claime, for the Couēt is but a dead body without head, for in time of vacation a grant made vnto them is void, & in this case an Abbot may not haue a writ of Entre vpon disseisin against the heire, for this that he was neuer disseised. And if ꝑ abbot may not enter in this case, then he shal be put vnto his writ of Right, ꝑ which shal be too hard for the house. By which it seemeth to them that the Abbot may wel enter &c. Quęras de dubijs, Legem bene discere si vis, Quærere dat sapere quæ sunt legitima vere.

¶ Releases.

RElease be in diuers manners, that is to say: Release of right that a man hath in lands or tenements: and release of actiōs reals & personals, & of other things. Release of all the right that a man hath in lands or tenements &c. is commonly made in such forme, or to such effect. Nouerint vniuersi per præsentes me A.B. remisisse, relaxasse, & omnino de me & hæredibus meis quietū clamasse E. de D. totum ius, titulum, & clameū meū quæ habui, habeo, vel quouismodo in futuꝝ habere potero,

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de,& in vno mesuag' cũ ptiñ in P. And it is to be vnderstood, that these words, (Remisisse & quiet clamasse) be of such effect as these words, Relaxasse &c.) And also these words which be cõmonly put in such déeds of Releases &c. that is to be vnderstood, Quę quouismodo in futurũ habere potero, be as words void in the law, for no right passeth by a Release, but the right that the releassor hath at the time of his release made: For if it be father & sonne, & the father be disseised, & the son liuing his father releaseth by his déed to the disseisor all the right that he hath, or may haue in the same tenemẽts, without clause of warrantize &c. and after the father dyeth, the sonne may lawfully enter vpon the possessiõ of the disseisor, for this that he had no right in the land lyuing his father, but the right discended vnto him by discent after the release made by the death of his father. Also in a release of all the right that a man hath in certaine lands, it behoueth vnto him to whom the release is made in such case, that he hath a fréehold in the lands in déed, or in the law, at the time of the release made, for in euery case where he to whom the release is made hath a fréehold in déed or in law at the time of the release made &c. the release is good. Franktenement in law is, as if a man haue disseised another, & therof died seised, by the which the tenements discend vnto his son, howbeit that his sonne enter not in the tenements, yet he hath a franktenement in the law, which by force of

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the discent is cast vpon him, and therefore the releas made is good enough. And if he take a wife so being seised in the law, howbeit that he neuer enter in deed, & dieth, his wife shall haue thereof her dower. And in such case of releas of all his right, howbeit that he to whom the releas is made, ne hath any thing in the franktenement, neither in deed nor in law, yet the releas is good enough. As if the disseisor haue let land that he had by disseisin to an other for terme of his life, sauing the reuersion to him, if the disseisee or his heires releasse vnto the disseisor all the right &c. that releas is good, for that that he to whom ỹ releas is made, had in him a reuersion at the time of the releas made. In the same maner, if a leas be made to a man for terme of life, the remainder vnto an other for terme of life, the remainder vnto the third in taile, the remainder vnto the fourth in fee, if a stranger that hath the right vnto the land releas all his right vnto any of them in the remainder, such releas is good, for this that euery of them hath a remainder vested in himself: yet if the tenant for terme of life be disseised, & after he that hath right (the possession being in the disseisor) releas vnto one of them to whom the remainder was made, all his right &c. that releas is voide, for that that he ne had in him no remainder in deed, but all onely a right of a remainder at the time of the releas made.

And note, that euery releas made to him that hath a reuersion or remainder in deede, shall

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serue & help them that haue the franktenemēt, aswell as them to whom the releas is made, if the tenant haue the release in his hand &c.

In the same maner a releas made to a tenāt for terme of life, or to a tenant in the taile, shall enure vnto them in the reuersion, or to them in the remainder, as well as to the tenant of the franktenement, & shall haue as great aduantage of that, if that they may shew it.

And if there be lord and tenant & the tenant is disseised, and the disseisée releaseth vnto the disseisor all the right that he hath in the seigniorie, or in the land, that releas is good, and the seigniory is extinct. And if the goods of the disseisée be taken, and of them the disseisée sueth a Replegiare against the lord, he shal compell the lord to anow vpon him, & if hee will anow vpon the disseisor, then vpon the matter shewed, the anowrie shall be abated, for the disseisée is tenant to them in right and in law.

Also if land be giuen to a man in the tayle, reserving vnto the donor & his heirs a certaine rent, if the donée be disseised, & after the donor releaseth to the donée all the right that he hath in the land, and after the donée entreth into the land vpon the disseisor: in this case the rent is gone, for this that the disseisée at the time of the release made was tenant in right, & in law vnto the donor, and the anowrie of fine force ought to be made vpon him by the donor of the rent behind &c. But yet nothing of the right of the land, that is to say, of the reuersion shall

passe

passe by such releas for this that the donée to whom the releas was made then had nothing in the land but only a right, & so the right of the land may not passe by such releas to the donée.

In the same maner it is, if a Lease be made to one for terme of life, reseruing to the lessy and to his heires certaine rent, if the lessée be disseised, & after the lessor releaseth to the lessée and to his heires, and after the lessée entreth, howbeit that in this case the rent is extinct, yet nothing of the right passeth &c. Causa qua infra. But if it be very Lord and very tenant, and the tenant maketh a feoffement in fée, the which feoffée neuer became tenant to the Lord &c. if the Lord releas to the feoffor all his right &c. that release is void, for this that the feoffor hath no right in the land, and hee is no tenant in right to the Lord, but only tenant as for the auowrie to be made, and he shall neuer compell the Lord to auow vpon him, for the Lord may auow vpon the feoffée if he will. Otherwise it is where the very tenant is disseised, as in case afore said, for if the very tenant that is disseised holdeth of the Lord by knights seruice & dieth, his heire being within age, the Lord shall haue and seise the ward of the heire. And so he shall not haue the ward of the feoffor that made the feoffement in fée, and so it is a great diuersitie betweene the two cases.

Also, if a man enfeoffe another in his land vpon trust, and to the intent that he shall performe his last will, and the feoffour occupieth

the same at the will of his feoffées, and after the feoffées release by their deed vnto the feoffour all the right &c. This hath been in question if such release be good, or not. and some haue said that such release is void, for this that no priuitie was betweene the feoffées and their feoffour, insomuch that no Lease was made after such feoffement by the feoffées and their feoffour to hold at their will &c. and some haue said the contrarie, & that for two causes. One is, that when such feoffements are made vpon confidence, to performe the will of the feoffor, that it shall be vnderstood by the Law, that the feoffour by and by ought to occupy the land at the will of his feoffées, and so it is such maner of priuitie betweene them, as if a man make a feoffement to another person, and they incontinent vpon the feoffement will say & grant that the feoffour shall occupie the land at their will &c. In other cause they alleadge, that if such land be worth xl. s. by yeere &c. Then such feffor shal be sworne in Assises, and in other Inquests, in pleés reals, and also in pleés personels, of what great summes soeuer that the plaintifes will declare &c. And this is by the Common Law of the land: Ergo this is for a great cause, and the cause is that the Law will that such feoffors and their heires ought to occupie &c. And to take thereof the rent & all the profits, and all maner of issues and reuenues &c. as though the tenements were their owne without interruption of feoffées, notwithstanding

ding such feoffements, Ergo the same law giueth a priuity betweene such feoffors, and their feoffées vpon confidence &c. For which causes they haue said, that the releas made by such feoffées vpon confidence to the feoffor, or to his heires &c. so occupying the land &c. shall be good enough &c. And this is the better opinion as it seemeth, Quære since the statute 27. H. 8. cap. 10. Also Releases after the matter in déed sometime haue their effect by force to enlarge the estate of them to whom the releas is made: As if I let certaine land to a man for terme of yeeres, by force whereof he is possessed, and I releas vnto him all the right that I haue in the land without more words set or put in the déede, and deliuer vnto him the déede: Then hée hath estate but for terme of his life, and the cause is for this, that when the reuersion or the remainder is in a man, the which will enlarge by his releas the estate of the tenant &c. he shall haue no greater estate but in the manner and forme as if such a seisour were seised in fée, and will by his déede make estate to one in a certaine forme &c. and deliuer vnto him seisin by force of the same déed, if in such déed of feoffement there be no word of inheritance &c. Then hee hath estate but for terme of life &c. and so it is in such releas made by him in the reuersion, or in the remainder: For if I let land to a man for terme of life, and after I releas vnto him all my right without more saying in the re-

leas,

leas, his estate is not inlarged. But if I release vnto him and to his heirs of his body engendred, then he hath fee taile. And if I releas vnto him & to his heires, then hath he fee simple. So it behoueth in such case to specifie in the deed, what estate he to whom the releas is made shal haue &c. And sometime a releas shal enure to let and put the right of him that maketh the releas to him to whom the releas is made: As a man is disseised, and he releaseth vnto the disseisor all the right that he hath: In this case the disseisor hath his right, so that where his estate before was wrong, now by the release it is lawful & right. But note well, that when a man is seised in fee simple of any lands or tenements, and an other will releas vnto him all the right that he hath in the same tenements, it needeth not to speak of the heirs of him to whom the release is made, for this that he had fee simple at the time of the releas made: for if the release were made to him and to his heires for one day, or for one hower, this shall be as strong vnto him in the law, as he had released to him and to his heires, for when his right was gone from him at one time by his release without any condition &c. to him that had fee simple, it is gone for euer. But where a man hath a reuersion or a remainder in fee simple at the time of the release made, there if he will release to the tenaunt for terme of yeeres, or for terme of life, or in the taile, it behoueth to determine the estate that

that he to whom the release is made shall haue by force of the same releas: For this that such releas goeth to inlarge the estate &c. of him to whom the releas is made: But otherwise it is where a man hath but a right vnto the land & had nothing in ꝯ reuersion nor in the remainder in deed: for if such a mā releas al his right to one that is tenant of the frank tenement, all his right is gone, though that no mention be made of the heires of him to whom the releas is made. For if I let land to a man for term of life, if I after releas vnto him for to inlarge his estate, either it behoueth that I releas vnto him & to his heires of his body ingedred, or to him and to his heires males of his body begotten, or by such semblable estate &c. or otherwise he hath no greater estate then he had before. But if my tenant for terme of life let the same land out to an other for terme of the life of his lessée, the remainder to an other in fe, now if I releas vnto him vnto whom my tenāt letted for terme of life, I shal be barred by euer though that no mention be made of his heires, for this that at the time of the releas made I had no reuersion but onely a right to haue the reuersion: For by such a leas with a remainder ouer that my tenant made, in this case my reuersion is discontinued, & such a releas shall inure vnto him in the remainder to haue aduantage of this, aswell as to the tenāt for terme of life, for to that intent the tenant for terme of life and he in the remainder be as one

tenant

tenant in the law, & be as if one tenãt were sole seised in his demesne as of fee at ꝯ time of such release made vnto him. Also if a man be disseised by two, if he release vnto one of thẽ, he shall hold his fellow out of the lãd, & by such release shal sole haue possessiõ & estate in the lãd. But if one disseisor infeoffe two in fee, & the disseisee release to one of them, this shall inure to both the said feoffees. And the cause of the diuersitie betwen these two cases, is apparant inough.

Also, if I be disseised, & the disseisor is disseised, if I release to the disseisor of my disseisor, my disseisor shall neuer haue Assise nor enter vpon his disseisor, for this that his disseisor hath my right by my release &c. And so it seemeth in this case, that if there were xx. disseisors ech after other, & I release to the last disseisor, he shal barre al the other of their actions & their title. And the cause is as it seemeth, for this, ꝯ in many cases whẽ a man hath a lawful title to enter, though he enter not &c. he shal defeat all mean titles by his release &c. But this is not in euery case, as shalbe said afterward.

Also, if a man be disseised, the which hath a sonne within age, and dieth, & being the sonne within age, the disseisor dieth seised, & the land discendeth to the heire, and a straunger abateth, and after the sonne of the disseisee when he commeth vnto full age releaseth al his right &c. to the abatour: In this case the heire of the disseisor shall haue no Assise of Mordauncester against the abator, but he shall be barred of the Assise,

Assise, for this that the abator hath the right of the sonne of the disseisée by his releas, & the entrie of the sonne was lawful &c. for this that he was within age at the time of the discent &c. But if a mā be disseised, & the disseisor maketh a feoffemēt vpon condition, that is to say, to yéeld vnto him certaine rent, & for default of payment a reentrie &c. if the disseisée releas to the feoffée vpon condition, yet this amendeth not the estate of the feoffée vpon condition, for notwithstanding such releas, yet his estate is vpon condition as it was before. In the same maner it is where a man is disseised of certain land, & the disseisor granteth a rent charge out of the same land, though that after the disseisée releaseth vnto ỹ disseisor &c. yet the rent charge abideth in his force: And the cause is in these two cases, that a man shall haue none aduantage by such release that shall be against his owne proper acceptance, & against his owne grant. And though that some haue said, that where the entrie of a man is congeable vpon a tenant, if he releas to the same tenant, that this auayleth vpon the tenant, so as he had entred vpon the tenant, & after infeoffed him &c. this is not true in euery case, for in the first case of these two cases, if the disseisée in fée enter vpon the feoffée vpon condition, & after infeoffeth him then the condition is all put aside & void. And in the second case if the disseisée enter & infeoffe him that graunted the rent charge, then is the rent charge auoyded. But it is not auoyded by

by any such release without entry made &c.

Also, if a man be disseised by a childe within age, the which alieneth in fee & the alience dieth seised, and his heire entreth (being the disseisor within age) Now it is in the electiõ of the disseisor to haue a writ of Dũ fuit infra ętatẽ, or a writ of Right against the heire of the alienee, & which writ soeuer he taketh of them, he ought to recouer by the Law. And also he may enter into the land without any recouerie, & in this case the entry of the disseisee is takẽ away: but in this case if the disseisee releas his right to the heire of the alienee, and after the disseisor bringeth a writ of Right against ꝑ heire of the alienee, and he ioyneth the mise vpon the cleere right &c. the grand Assise ought by the law to find that the tenant hath more cleere right &c. then hath the disseisor, for this that the tenant hath the right of ꝑ disseisee, & his releas, which is more auncient & more cleere right then the right of the disseisor, for by such releas, all the right of the disseisee passeth vnto the tenant, & is in the tenant. And to this some haue said, that in such case where a man hath right to lands or tenements (but his entry is not lawfull) if hee releas vnto the tenant &c. then such releas shall enure by way of extinguishment. And vnto this it may bee said, that this is trueth vnto him that releaseth, for by his releas he hath dismissed himselfe cleane of his right as to his person: But yet the right that he had may well passe and goe vnto the tenant by his

releas, for it should be inconuenient ỹ such an ancient right should be extinct al otterly &c. for it is cõmonly said, that right may not die. But a releas that goeth by ỹ way of extinguishment against all persons, is where he to whõ the releas is made, may not haue this ỹ vnto him is released. As if there be lord & tenant, & the lord releaseth vnto ỹ tenãt al the right that he hath in the lordship, or all the right ỹ he hath in the land &c. such a releas goeth by way of extinguishment against al persons, for this ỹ the tenant may not haue the same of himself. In the same maner is a releas made to ỹ tenãt of the land of a rent charge, or of a cõmon of pasture, for it is that the tenant may not haue that that vnto him is released &c. So such releases go away by extinguishmẽt against all persons.

Also, to proue ỹ the grãd assise ought to passe for the demandãt in the case aforesaid, I haue heard often in the lecture vpõ the stat. of west. the 2. that beginneth, In casu quãdo vir amiserit per defaltam tenemẽtũ qd' fuit ius vxoris sue &c. that at the cõmon law before that statute, if a leas were made to a tenãt for terme of life, the remainder ouer in fee, & a stranger by a feined action recouer against the tenãt for terme of life by default, & after the tenant dieth, he in the remainder hath no remedy before the statute, for this that hee had no possession of the land, but if he in the remainder had entred vpon the tenãt for terme of life, and disseised him, and after the tenant entreth vpon him, & after

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the tenant for terme of life leaseth by such recouerie had by default, and dieth: now hee in the remainder may well haue a writ of Right against him that recouered, for this that the mise shalbe ioined only vpō the cleere right. And yet in this case the seisin of him in the remainder was defeated by the entry of the tenant for terme of life. But peraduenture some will argue & say, that he shall haue no writ of right in this case, for this that when the mise is ioyned in such maner, that is to say, if the tenant haue more cleere right to the land in the maner as it is holden, then the demaundant hath in the maner as he demandeth, And for this that the seisin of the demaundant was defeated by the entry of the tenāt for terme of life, then he hath no right in the maner as he demandeth. Vnto this it may be said, that those words (Modo & forma pro vt &c.) in many cases be words of the maner of pleading, & no words of substance: For if a man bring a writ of Entre (In casu prouiso) of alienation made by the tenant in dower to his disinheritance, and pleadeth of the alienation made in fee, & the tenant saith that hee aliened not in the maner as the demandant hath declared, and vpon this they be at issue, and it is found by verdict that the tenant aliened in the taile, or for terme of an others life, the demandant shall recouer, and yet the alienation was not in the maner as the demandant hath declared.

Also, if there be Lord and tenant, and the tenant

tenant holdeth of the lord by fealty onely, & the lord distraineth the tenāt for rent, & the tenant bringeth a writ of trespas against his lord for his cattell so taken, & the lord pleadeth that the tenāt holdeth of him by fealty & certaine rent, & for the rent behind he came to distrain &c. & demandeth iudgmēt of the writ brought against him, Quare vi & armis &c. And the other saith that he holdeth not of him in the maner as he supposeth, & vpon this they be now at issue, & it is found by verdict that he holdeth of him by fealty tantū. In this case the writ shall abate, and yet he held not of the lord in the maner as the lord had said, for the matter of the issue is, whether the tenant holdeth of him or not: For if he hold of him, though the Lord distraine for other seruices that he ought not haue, yet such a writ of Tresplas, Quare vi & armis &c. lieth not against the Lord but shall abate.

Also, in a writ of Tresplas of beating, or of goods taken, if the defendant plead non culpable in the maner as the plaintife supposeth, & it is found that the defendant is culpable in an other towne, or at an other day, then the plaintife supposeth, yet he shall recouer: And in many mo other cases these wordes, that is to say, in the maner as the demandant or the plaintife hath supposed, be no matter of substance of the issue: for in a writ of right where the mise is ioyned vpon the clere right, it is asmuch to say, and to such effect, that is to wit, whether hath the more right, the tenant or

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the demandant to the thing so demanded &c.

Also, if a man be disseised, & the disseisor dieth seised &c. and his sonne entreth by discent, and the disseisée entreth vpon the heire of the disseisor, the which entry is a disseisin &c. if the heire bring an Assise, or a writ of Right against the disseisée, he shall be barred: For this that when the graund assise is sworne, their oath is vpon the clære right, and not vpon the possession &c. for if the heire of the disseisor had brought an Assise of Nouel disseisin, or a writ of Entre in nature of assise, & recouered against the disseisée, & sued execution, yet may the disseisée haue a writ of Entre in the Per against him of the disseisin made vnto him by his father, or he may haue against the heire a writ of Right: But if the heire ought to recouer against the disseisée in ỹ case aforesaid by a writ of right, then all his right shal be clærely gone for this that a finall iudgemẽt should be giuen against him, which should be against reason where the disseisée hath more clære right &c.

And know ye my son, that in a writ of Right after this that the fower Knights be chosen in the graund Assise, then there is no greater delay then in a writ of Formedon, after this that the parties be at issue &c. And if the mise bee ioyned vpon battaile, then there is lesse delay.

Also, a release of all the right &c. in some case is good, made vnto him that is supposed tenant in the law, though he haue nothing in the tenements, as in a Præcipe quod reddat,

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if the tenant alien the land hanging the writ, and after the demãdant releaſed to him all his right, that releaſe is good, for this that he is ſuppoſed to be tenant by the ſuit of the demandant, & yet he hath nothing in the land at the time of the releaſe made. In the ſame maner it is, if in a Præcipe quod reddat the tenãt voucheth, & the vouchée enter into the garranty, if after the demaundant releas to the vouchée all his right &c. this is good inough, for this that the vouchée after this that he hath entred into the garranty, is tenant in law to the demandant.

Alſo, as to releaſes of actions reals, and actions perſonels, it is ſo that ſome actions be mixt in the realtie and in the perſonaltie, as if an action of waſt be ſued againſt the tenant for terme of life, this action is in the realtie, for this that the place waſted ſhall be recouered. And alſo it is in the perſonaltie, for this that the treble dammage ſhall be recouered for the wrong & waſt done by the tenãt, & for this in this action a releaſe of actions reals is a good pleé in barre, and ſo is a releaſe of actions perſonels. In the ſame maner it is in Aſſiſe of Nouel diſſeiſin, for this that it is mixt in the realty and in the perſonalty. But if ſuch Aſſiſe be arraigned againſt the diſſeiſor, the tenant of the diſſeiſor may pleed a releaſe of all actions perſonels for to barre the Aſſiſe, but not a releas of actiõs reals, for none ſhal pleed a releas of actions reals in aſſiſe, but the tenants &c.

Alſo, in ſuch actions that ought to be ſued againſt

against the tenant of the franktenement, if the tenant haue a releas of all actions reals of the demaundant made vnto him before the writ purchased, & he pleadeth it, this is a good plee for the demandant to say that he that pleadeth that plee had nothing in the franktenement at the time of the releas made, for that he had no cause to haue action real against him.

Also, in such case where a man may enter in lands or tenements, he may haue of this an action reall which is giuen vnto him by the law against the tenant. As in this case the demandant releaseth to the tenant all maner actions reals, yet this taketh not away the entrie of the demaundant, but the demaundant may well enter, notwithstanding such releas, for this that nothing is released but the action &c. In the same maner it is of things personels: As if a man wrongfully take my goods, if I releas vnto him all actions personels, yet I may by the Law take my goods out of his possession.

Also, if I haue cause to haue a writ of Detinue of my goods against an other, though that I releas vnto him al actions personels, yet I may take my goods out of his possession, for this that no right of goods is released to him but onely the action &c. Also, if a man be disseised, and the disseisour maketh a fresfement vnto diuers persons to his vse, and the disseisour continually taketh the profites &c. and the disseisee releaseth vnto him all actions reals,

reals, and after he sueth against him a writ of Entrein nature of assise, because of the statute, for this that he taketh the profites. Inquire how the disseisour shall be holpen by the said releas, for if hee will pleade the releas generally, then the demaundant may say that he had nothing in the franketenement at the time of the releas made, and if he plead the releas specially, then it behoueth him to knowledge a disseisin, and then may the demandant enter in the land &c. by his conisance of the disseisin &c. But peraduenture by special pleading he may be barred of the action that he sueth &c. though that the demandant may enter &c.

Also if a man sue appeal of Felony of the death of his ancestor against an other, though the appellant releas vnto the defēdant all maner actions releas and personels, this shall not helpe the defendant, for this that this appeal is not an action reall, insomuch that the appellant shall not recouer any realty, nor such appeal is no action personall, insomuch that the wrong was vnto his aunceſtour and vnto him: but if he releas to the defendant all maner of actions, then it shall be a good barre in appeal. And so a man may see that a releas of all maner of actions, is better then a releas of actions reals and personels &c.

Also, in appeal of Robbery, if the defendant will plead a releas of the appellant of all actions personels, this seemeth no plee, for an action of appeal where the appellant shall haue

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iudgement of death &c. is more high then an action personall, and it is not properly said an action personall, and therefore if the defendant will haue the releas of the appellant to barre him of the Appeal, it behoueth him to haue a releas of all manner of Appeales, or a Releas of all manner of actions, as it seemeth &c. But in appeal of Maihem, a releas of all manner of actions personals is a good plea in barre, for this, that in such an action he shall recouer but damages.

Also, if a man be outlawed in an action personall by proces of the originall, & bring a writ of Error, if he at whose suit he was outlawed will plead against him a releas of actions personals, this seemeth no plee, for by the said action he shall recouer nothing in the personaltie, but all onely to reuerse the outlawry: But a releas of a writ of Error shal be a good plee &c.

Also, if a man recouer det or damage, & he releas to the defendant all manner of actions, yet he may lawfully sue execution by Capias ad satisfaciendū, or by Elegit, or by Fieri facias, for execution by such writs may not be said an action, but if after a yeare and a day the plaintife will sue a Scire facias to haue execution &c. then it seemeth a releas of all actions shall be a good plea in barre: but some haue thought the contrarie, insomuch that the writ of Scire facias is a writ of execution, and is to haue execution. But insomuch that vpon the same writ the defendāt may plead diuers matters

ters after the iudgemēt giuen to put him in execution, as vtlawry, & diuers other &c. therfore it may wel be said action &c. & I trow that in a Scire facias out of a fine, a releas of all maner of actiōs is a good plé in bar, but when a mā hath recouered det or damage, & it is accorded betweene them, that the plaintif shalbe put out from action, then it behoueth that ỹ plaintife make a releas to him of all maner actions.

Also if a man releas to an other all maner demands, this is the most best releas that he to whom the releas is made can haue, & nothing shall enure to his aduantage, for by such releas of all maner of demands, all maner of actions reals & personels, and actions of appeales be gone and extinct, and all maner of executions be gone & extinct: and if a man hath title to enter in any lands or tenements, by such releas his title is gone. And if a man haue rent seruice, or rent charge, or common of pasture &c. by such releas of all maner demands to the tenant of the land, whereof the seruice, or the entrie is going out, or in what land soeuer the common be, the seruice and rent, and the common is gone and extinct &c.

Also, if a man releas to an other all maner quarrels, or all controuersies or debates betweene them. Inquire to what matter, and to what effect such words doe extend.

Also if a man be bound by his deed to another in a certain summe of money to pay at the feast of S. Mich. then next following &c. if the obligo

obligé before the said feast, releas to the obligor all actions, he shall be barred of the duetie for ever, and yet he might haue no action at the time of the releas made. But if a man let land to an other for terme of yeares, to yeeld at the feast of S. Which next insuing xl. s. & before the same feast he releaseth to the lessé all actions, yet after the same feast hee shall haue an action of debt for the non payment of the xl. s. notwithstanding the said releas. Studie the cause of the diuersity betweén these two cases.

Also, where a man will sue a writ of right, it behoueth that he plead of ỹ seisin of himselfe or of his ancestors, & also that the seisin was in time of the same king, as he pleadeth in his plé, for this is an ancient law vsed, as it appeareth by report of a certaine plé, in such forme as insueth. Sir J. Warrey brought a writ of right against Rainold Ashington, & demaunded certain tenements &c. the mise was ioined in the banke, & the originall & the proces were sent before Justices errāts, where the parties came, & the xij. knights were sworne without challenge of the parties to be allowed, for this that the electiō was made by assent of the parties, with the 4. knights, & the oath was such. That I shall say truth &c. whether R. of A. haue more right to hold the tenements that J. Warrey demanded against him by his writ of right, or John to haue the tenemēts as he demandeth, & for nothing to let to say the trueth, so God mée help &c. without saying to their know-

knowledge, & such oath shalbe made in attaint, and in battaile, & in waging of Law, for that do bring euery thing vnto an end: but I. S. pleaded of ỹ disseisin of one Rafe his auncestr in ỹ time of king H. & Rainold vpō ỹ mise joyned tendred halfe a marke for the time &c. & vpon this Herle Iustice said to the grand assise, after ỹ they were charged vpon the clere right: Godmen, Rainold gaue halfe a marke to the king for that time, to the intent that if yē find ỹ the auncestr of I. was not seised in the time that the demandant hath pleaded, you shall inquire no further vpon the right, and for this ỹ shall say to vs whether the ancestr of I. Rafe by name, was seised in the time of king Henry as he hath pleaded or not: & if yē find that he was not seised in the time, ye shall inquire no more, & if ye find ỹ he was seised, then inquire farther of the right: and after the grand assise came with their verdict & said that Rafe was not seised in the time of king Henry, wherby it was awarded that Rainold should holde the tenements against him demanded to him and to his heires quite of I. Barrey & his heirs, to the remnant, and John in the mercy.

Confirmation.

A Dēed of confirmation is most commonly in such forme, or to such effect. Nouerint vniuersi &c. me A. de B. ratificasse, approbasse & confirmasse C. de D. statū & possessionē quos habet de, & in vno messuag cū pertin in N. &c. And in some case a deed of confirmation is good & bind-

able

able, where, in the same case a deed of releas is not good nor vailable. As I let land to a man for terme of his life, the which letteth the same land to an other for xl. yeeres, by force of the which he is possessed, if I by my deed confirme the state of the tenant for terme of yeeres, & the tenant for terme of life dieth during the terme of yeeres, I may not enter in the land during ỹ same term, yet if I by my deed of releas haue released to the tenant for terme of yeres in the life of the tenãt for terme of life, the releas shall be void, for this, that then no priuitie was betweẽ me & the tenant for terme of yeeres, for a releas is not auailable to the tenant for terme of yeres, but where a priuity is betweene him and him that releaseth. In the same maner it is if I be disseised, & the disseisor maketh a leas to an other for terme of yeeres, if I releas vnto the termor, ỹ is void: but if I cõfirme the estate of the termor, that is good & effectuall. Also, if I be disseised, & I confirme the state of the disseisor, thẽ he hath a good & rightfull estate in fee simple, though that in the deed of confirmation no mention is made of his heires, for this that he had fee simple at the time of the cõfirmation: for in such case if the disseisee confirme the state of the disseisor, to haue & to hold to him for term of his life, yet the disseisor hath fee simple, & is seised in his demeine as of fee, for this that whẽ his estate was cõfirmed, he hath fee simple, & in such deed he may not chãge his estate without entrie vpõ him &c. In ỹ same maner it is, if the estate

eſtate be cõfirmed for term of a day, or for term of an houre, he hath a good eſtate in fee ſimple, for this, that his eſtate in fee ſimple was confirmed, for cõfirmare, idē eſt qđ firmũ facere.

Alſo, if ñ. be diſſeiſors, & the diſſeiſee releaſeth to the one, he ſhall hold his fellow out of the land: But if the diſſeiſee confirme the eſtate of one without more ſpeech in the deed, ſome ſay that he ſhal not hold his fellow out, but he ſhall hold iointly with him, for this, ỹ nothing was confirmed but his eſtate that was ioint; & by this ſome haue ſaid, that if ñ. iointenãts be, & the one confirmeth the eſtate of the other, that he hath but a ioint eſtate as he had before. But if he haue ſuch words in the deed of cõfirmation, to haue & to hold to him & to his heires all the tenements wherof mention is made in the confirmation then he hath eſtate ſole in the tenemẽts, & therfore it is a good & a ſure thing in euery cõfirmation, to haue theſe words, to haue & to hold the tenements &c. in fee, or in fee taile, or for terme of life, or for terme of yeres &c. or as the cauſe or matter is: for to ſhunne (as ſome, if a man let land to an other for terme of life, and after he confirmeth his eſtate by theſe words, to haue & to hold his eſtate to him & his heires, this confirmation as concerning his heires in void, for his heires cannot haue his eſtate which was but for terme of life, but if he cõfirme his eſtate by theſe words, to haue the ſame land to him & to his heires, this confirmation maketh fee ſimple in this caſe to him

in the land, for this, that these words, to haue & to hold &c. goeth to the land, & not to the estate that he hath &c. Also if I let certein land to a woman sole for terme of her life, the which taketh a husbād, & after I confirme the estate to the husband & to the wife for term of their two lines, in this case ȳ husbād holdeth not iointly with the wife, but holdeth in the right of his wife for terme of his life: but this cōfirmation shal enure to the husbād by way of remainder for terme of his life, if he suruiue his wife. But if I let land to a womā sole for terme of yeres, which taketh a husband, & after I cōfirme the estate to the husband & the wife, for terme of both their liues, in this case they haue ioint estate in the franktenemēt of the land, for this that the wife had no franktenement before.

Also, if a Parson of a church charge the glebe of his Church by his deed, & the Patron & the Ordinary confirme the same grant, & al that is compriſed within the same grant, ȳ same grant shall be in his strength after the purpose of the same graunt: but in such case it behoueth that the patron haue fee simple in the aduowson, for if he haue estate in ȳ aduowson for term of life, or in taile, then the grant shal stand but during his life, & ȳ life of the parson that granted it &c.

Also, if a man let land for terme of life, which tenant for terme of life chargeth the land with a rent in fee, and he in the reuersion confirmeth the same graunt, this charge is good inough & effectual. And if there be a perpetuall Chātry,

whereof the Ordinary hath nothing to medle nor to do, the patron of the chãtry, & the chaplain of the same chãtry may charge the chãtry with a rent charge in perpetuity. Also in some case these verbes Dedi & cõcessi, haue the same effect in substãce, & shal enure to the same intent as this verb cõfirmaui: as if I be disseised of a plough land, & after I make such a deed &c. Sciant præsentes & c. qd' dedi to the disseisor the said plough land &c. And if I deliuer only the deed to him without liuery of seisin of the land, that is a good cõfirmatiõ, & as strong in the law, as if he had in the deed this verb Confirmaui &c.

Also, if I let land to a man for term of yeres, by force of which he is possessed, & after I make him a deed &c. Qd' dedi, vel cõcessi &c. the same land, to haue for terme of his life, & deliuer him the deed, then by & by he hath estate in the land for terme of his life, & if I say in ỹ deed, to haue to him & to his heires of his body ingendred, he hath estate in the taile, & if I say in the deed, to haue & to hold to him & to his heires, he hath estate in fee simple, for this shal enure to him by force of cõfirmation to inlarge his estate. Also if a man be disseised, & the disseisor dieth seised, & his heire in by discent, after the disseisee & the heir of ỹ disseisor make iointly a deed to another in fee, & liuery of seisin vpon this is made, and the heire of the disseisor that inealeth the deed, the tenemẽts passe by the same deed by way of feffemẽt, & as to ỹ disseisee ỹ inealeth the same deed, this shall not enure but by ỹ way of con-

firmation: But if the disseisee in this case bring a writ of Entry in the (Per & Cui) against the alienée of the heire of the disseisor, inquire how he shall plead the deed against the demandant by way of cõfirmation &c. And know this my child, that it is one of the most honorable, laudable, & profitable things in our Law, to haue the science of well pleading, in actions reals & personals, and for this I counsaile thée, especially to set thy courage & care to learne that.

Also, if there be Lord and tenant, & the Lord confirmeth the estate that the tenant hath in the tenements, yet the seigniory wholy abideth to the Lord as it was before. In the same maner it is if a man haue a rent charge out of certaine land, and he confirmeth the state that the tenant hath in the land, yet abideth to the confirmor the rent charge. In the same maner it is, if a man haue cõmon of pasture in the land of any other, if hée confirme the state of the tenant of the land, nothing shall depart from him of his common, but this notwithstanding the common abideth to him as it was before.

But if there be Lord & tenant, which holdeth of his Lord by seruice of fealty, & xx.s. of rent, if the lord by his deed confirme the estate of the tenant to hold by xij.d. j.d. or by an ob. in this case the tenant is discharged of all other services, and shall yeld nothing to the Lord, but that that is compzised within the same confirmation, yet if the Lord will by the deed of confirmation, that the tenant in this

case ought to yeeld to him a Hauke, or a Rose yerely at such a feast &c. this reservation is void, for this that hee reserveth to him a new thing that neuer was parcell of the services before the confirmation, and so the Lord may abridge the services by such confirmation, but he may not reserue to him a new service &c.

Also, if there be Lord, Meine, & tenant, & the tenant is an Abbot that holdeth of the meine by certaine services yerely, the which hath no cause to haue acquitance against his meine by to bring a writ of Meine &c. in this case if the meine confirme the estate that the Abbot hath in the land, to haue and to hold the land vnto him & his successors in frankalmoigne, or free almes &c. in this case this cõfirmation is good, & then the Abbot holdeth of the meine in frãkalmoigne: & the cause is for this, ỹ no new service is reserued, for all ỹ services specially specified be extinct, & nothing is reserued to the meine, but the Abbot shall hold the land of him as it was before the confirmation, for he that holdeth in frãkalmoigne ought to do no bodily seruice, so that by such cõfirmation it appeareth that ỹ meine shal not reserue vnto him no new seruice, but that the lands shalbe holden of him as it was before, & in this case the Abbot shall haue a writ of Meine, if he be distrained in his default, by force of the said cõfirmation, when percase he might not haue such a writ before.

Also, if I be seised of a villein, as of a villein in grosse, & an other taketh him out of my pos-

session

ſeiſion claiming him to be his villein, whereas he hath no right to haue him as his villeine, & after I confirme the eſtate to him that he hath in my villeine, this confirmation ſeemeth void, for this, that none may haue poſſeſſiō of a man as of a villeine in groſſe, but hee which hath right to haue him as his villeine in groſſe, and inſomuch that hee to whom the confirmation was made, was not ſeiſed of him as of his villeine at the time of his confirmation, ſuch confirmatiō is void: but in this caſe if ſuch words where in the deed, Sciatis me dediſſe & confirmaſſe tali &c. talem villanum meum, this is good, but this ſhall enure by force and way of graunt, and not by way of confirmation &c.

Alſo ſometimes theſe verbes (Dedi & conceſſi) enure by way of extinguiſhment of the thing giuen or granted, As a tenant holdeth of his lord by certaine rent, & the lord by his deed granteth to the tenāt & to his heires ꝑ rent &c. this ſhall enure to the tenant by way of extinguiſhmēt, for by this grant the rent is extinct. In the ſame maner it is, where one hath a rēt charge of certain land, & he granteth to the tenant of the land the rent charge, and the cauſe is for this, that it appeareth by the words of the grant, that the will of the donor is, that the tenant ſhall haue the rent &c. inſomuch that he may haue no rent out of his own land, for this, the deed ſhal be vnderſtood & taken for the moſt aduantage & auaile of the tenant that it may be taken, & that is by way of extinguiſhment.

Alſo

Also, if I let land to a man for term of yeres, and after I confirme his estate without mo wordes put in deed, he hath no greater estate but for terme of yeres, as he had before: But if I releas to him my right that I haue in the lād without mo wordes put in the deed, he hath estate of franktenement. And so mayest thou my child vnderstād great diuersities betwen releases & confirmations. And if I be within age, & let land to one for terme of xx. yeres, and he graunteth the land for terme of x. yeres, so that he graunteth but parcell of the terme: In this case when I am of full age, if I releas vnto the grauntee of the lessee &c. this releas is void, for this, that there is no priuitie betweene him & me. But if I cōfirme his estate, then this confirmation is good: But if my lessee graunt all his estate to an other, then my releas made to the grantee is good & effectuall.

Also, if a man grant a rent charge out of his land to an other for terme of his life, & after he confirmeth his estate in ꝑ same rent, to haue & to hold to him in fee taile, or in fee simple, this confirmation is void, as to the inlarging of his estate, for this, that he that confirmeth had no reuersion in the rent: But if a man be seised in fee of rent seruice, or of rent charge, & he granteth the rent to an other for terme of life, & the tenant attorneth, & after he confirmeth ꝑ estate of the grātee in fee tail, or in fee simple, this cōfirmation is good as to inlarge his estate after the wordes of the deed of confirmation, for this

that

that he that confirmed the estate at the time of the confirmation had the reuersion of the rent &c. But in this case aforesaid, where a man granteth a rent charge to an other for terme of life, if he will that the grauntée shal haue estate in the taile, or in fée, him behoueth that the déed of the graunt of the rent charge for terme of life, be surrendred or cancelled, & then to make it a new déed of such a rent charge, to haue and to take to the grauntée in the taile, or in fée. Ex paucis dictis intendere plurima possis.

¶ Attournement.

ATtournement is, if there be Lord and tenant, & the Lord will graunt by his déed the seruice of his tenant to an other for terme of yeres, or for terme of life, or in taile, or in fée, it behoueth that the tenant attourne to the grauntée in the life of the graunter by force & vertue of the graunt, or otherwise the grant is void. And Attournement is none other thing in effect, but when the tenant hath heard of the graunt made by his Lord, that the same tenant by word agrée to the said graunt, as to say to the grauntee, I agrée mée to the graunt made to you, or I am well content of the graunt made to you &c. But the more common attournement is to say, Sir, I attourne to you by force of the same grant, or I become your tenant &c or to deliuer vnto the grauntée j.ð.ob. or farthing, by way of attornement &c.

Also, if a man be seised of a manour, which manor is parcel in demeine, & parcel in seruice, it

if he will alien such a manor to an other, it behoueth that by force of the alienation all the tenãts that hold of the alienor (as of this manor &c.) attourne to the alienee, or otherwise the services abide continually in the alienor, except tenãts at will, for it needeth not that tenãts at will attorne vpõ such alienatiõ &c. for this that the same lands or tenemẽts ỹ they hold at will do passe to ỹ alienee by force of such alienation.

Also, if there be Lord and tenant, and the tenant letteth the tenements to a man for terme of life, the remainder to an other in fee, if the Lord grant the services to the tenãt for terme of life in fee, in this case the tenant for terme of life hath fee in the services, but the services be put in suspence during his life, but his heirs shall haue the services after his death, and in that case it needeth not attournement, for by the acceptance of the deed of him that ought to attourne, this is attournement in himselfe &c. But where the tenant hath as great and high estate in the tenements as the Lord hath in the seigniory, in such case if the Lord grant the seruice vnto the tenant in fee, this entereth by way of extinguishment, Causa patet.

Also, if there be Lord & tenant, & the tenant maketh a leas to one for term of life, sauing the reuersion vnto him, if the Lord grant the seigniory to the tenãt for terme of life in fee, in this case it behoueth that he in the reuersiõ attorne to the tenãt for term of life by force of ỹ grant, or otherwise the grant is void, for this that he

in the reuersion is tenant to the Lord.

Also, if there be Lord and tenant, and the tenant holdeth of the Lord by twenty maner of seruices, and the Lord graunteth his seigniorie to an other, if the tenant pay or do any of the seruices to the graunteé, this is a good attournement, of and for the seruices, though that the tenants intent was to attourne but of the same parcell, for this that the Seigniorie is an whole thing, though that there be diuers manner of seruices that the tenant ought to do.

Also, if there be Lord and tenant, and the tenant holdeth of the Lord by many maner of seruices, and the Lord graunteth the seruices to an other by fine, if the graunteé sue a Scire facias out of the same fine, for any parcel of the seruices, and had iudgement to recouer, this iudgement is a good attournement in the law for all the seruices.

Also, if the Lord of the rent graunteth the seruices vnto an other, and the tenant attourneth by a peny, and after the graunter distraineth for rent behinde, and the tenant to him maketh rescous: In this case the graunteé shall haue no Assise of the rent, but hee shall haue a writ of Rescous, for that the gift of the penie was but by way of attournement. But if the tenant had giuen vnto the graunter the said peny as parcell of the rent, or a halfe penie, or a farthing, by way of seisin of the rent, then this is a good attournement, and also it

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is a good seisin to the grauntee of the rent, and then vpon such rescous the grauntee shall haue an Assise &c.

Also, if a man let tenements for terme of yeres, by force of which the lesse is seised, and after the Lord grauteth by his deede the reuersion to an other for terme of life, or in taile, or in fee, it behoueth him in this case that the tenant for terme of yeres attourne, or otherwise nothing passeth to such grauntee by such deed. And if in this case the tenant for terme of yeres attourne to the grauntee, then by and by passeth the franktenement to the grauntee by such attournement, without any liuery of seisin &c. for this, if any liuery shall be made, or needeth to be made in such case, then the tenant for terme of yeres shall be at the time of the liuery of seisin out of his possession, which should be against reason.

Also, if land be let to a man for terme of yeres, the remainder to an other for terme of life, reseruing to the lessor a certain rent by the yeere, and liuery of seisin is made vpon this to the tenant for terme of yeres, if he in the reuersion in such case grant his reuersiō to another &c. and the tenant that is in the remainder after the term of yeres attourneth, this is a good attournement, and he to whom the reuersion is granted, by force of such attournement shall distraine the tenant for terme of yeres for the rent due after such attournement, though the tenāt for terme of yeres neuer attourned vnto him,

him, and the cause is for that, where the reuer-
sion is dependant vpon the state of franktene-
ment, it sufficeth that the tenant of the frank-
tenement attorne vpon such graunt of reuer-
sion &c. And it is to wit, that where a lease for
terme of yéres, or for terme of life, or a gift in
the taile is made to any man, reseruing to such
a lessor or donor certaine rent, if such a lessor or
donor grant his reuersion to another, and the
tenant of the land attorne, the rent passeth to
the grantée, though in the deed of the graunt of
reuersion, no mention is made of the rent, for
this that the rent is incident to the reuersion
in such case, & not econuerso, for if a man will
graunt the rent in such case vnto an other, re-
seruing to him the reuersiõ of the land, though
the tenant attorne to the graunteé, this shalbe
but a rent secke &c.

Also, if a man let land to an other for terme
of life, & after such lease he confirmeth by a deed
the estate of the tenant for terme of life, the re-
mainder to an other in fée, and the tenaunt for
terme of life accepteth the deed, then is the re-
mainder indéed to him to whõ the remainder
was giuen or limitted in the same deed, for by
the acceptance of the tenant for terme of life of
the same deed, this is a grant of him, & so an at-
tournement in law. But yet he in the remain-
der shal haue none action of wast, nor other be-
nefit by such remainder, but if he haue the same
deed in his hand by which the remainder was
graunted vnto him, & for this that in such case

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the tenant for terme of life will retaine to him the deed, to the intent that he in the remainder shall not haue an action of waste against him, for this that he may not come to haue the possession of the deed &c. It shall be good in such case for him in the remainder, that a deede indented be made by him that will make the confirmation, and the remainder ouer &c. And he that maketh such confirmation deliuer a part of the Indenture to the Tenant for terme of life, and the other part to him that hath the remainder, and then he by shewing of the part of the Indenture, may haue an action of waste against the tenant for terme of life, & also other aduantage, that he in the remainder may haue in such case.

Also, if two Iointenants be, which let land to an other for terme of life, yeelding to them and their heires a certaine rent by part: In this case if one of the two Iointenants in the reuersion release to the other Iointenant in the same reuersion, this release is good, and he to whom the release is made, shal haue only the rent of the tenant for terme of life, and shall haue a writ of waste against them, though he neuer attorned by force of such release. And the cause is, for the priuitie that once was betweene the tenant for terme of life, and them in the reuersion.

In the same manner, and for the same cause it is, where a man letteth land to an other for terme of his life, the remainder to another

for

for terme of his life, reseruing the reuersion to the lessor, in this case if he in the reuersion releas to him in the remainder &c. & to his heires all his right &c. then he in the remainder hath a fée &c. and shall haue a writ of waste against the tenant for terme of life without any attournement of him &c.

Also, if a leas be made for terme of life, the remainder vnto an other in the taile, the remainder ouer to the right heires of the tenant for terme of life, in this case if the tenant for terme of life grant his remainder in fée to an other by his déed, the remainder by and by passeth by his déed without any other attornmét: For if any ought to attourne in this case, it should be ỹ tenãt for terme of life. And it were in vain that he attorne vpõ his own grant &c.

Also, if there be Lord & tenant, and the tenant holdeth of the Lord by certaine rent and knights seruices, if the Lord grant the seruices of the tenant by fine, the seruices be by and by in the graunte by force of the fine, but yet the Lord may not distraine for any parcell of his seruices without attornement. But if the tenant die, his heire being within age, the lord shal haue the ward of the body of the heire and of the land &c. howbeit that he neuer attorned: for this that the seigniory was in the graunte maintenant by force of the fine.

And also in such case if the tenant die without heire, the Lord shall haue the tenancy by way of Escheat. In the same maner it is if a

man grant the reuersion of his tenāt for terme of life to an other by fine, the reuersion passeth presently to the grauntee by force of the fine, but the grantee shall neuer haue action of waste without attornement &c. But yet if the tenant for terme of life alien in fee, the grauntee may enter &c. for this that the reuersiō was in him by force of the fine, & such alienation was to his disinheritance. But in this case where the Lord graunteth the seruices of his tenant by fine, if the tenāt die, his heirs being of full age, the grantee by the fine shal not haue the relief, nor neuer shall distraine for the relefe, except there had bēn some attornement of the tenant that dyed &c. for of such things that lye in distresse, vpon the which a writ of Replegiare is sued &c. a man ought to auow the taking good and righteous &c. and there ought to be attournement of the tenant, howbeit that the grant of such seruices be by fine. But to haue ward of lands & tenements so holden during the nonage of the heire, or them to haue by way of Escheat, there needeth not any distresse &c. but an entrie in the land by force of the right of the seigniory that the grantee hath by force of the fine.

Also, in auncient Boroughes or Cities where tenements within the same boroughes or Cities bēen deuisable by testament by the custome and the vse &c. if in such Borough or Citie a man be seised of rent seruice, or of rent charge, and he deuiseth such rent or seruice to an

n other by his testamēt and dieth &c. In this ase he to whom the deuise is made may di= train for the rent or the seruices behind, how= eit that the tenant neuer attourned. In the me maner it is, where a man letteth such te= ements deuisable to an other for terme of life, or for terme of yeres, & deuiseth the reuersion y his testamēt to an other in fee, or in fee taile, nd dyeth, and anon after that the tenant ma= eth wast, he to whom the deuise was made hall haue a writ of wast, howbeit that the enant neuer attourned: and the cause is for his, that the will of the deuisor made by the estament, shall be performed after the intent f the deuisor, and if the effect of this should be pon the attourning of the tenant &c. then erchase the tenant would neuer attourne, and hen the wil of the deuisor should neuer be per= ormed, and therefore the deuisee shall distrain, or haue an action of wast without attourne= ment. For if a man deuise such tenements to n other by his testament (habend' sibi imper= etuum) and dieth, and the deuisee entreth, he ath a fee simple, Causa qua supra, and yet if a eed of feoffement were made to him by the euisor of the same tenements (habendum & enendū sibi imperpet) and liuerie and seisin were thereupon made, he shal haue none estate ut for terme of life &c.

Also, if a man be seised of a Manour which is parcell in demesne, and parcell in seruy= ces, and thereof bee disseised, but the tenant

which holdeth of the manor, neuer attourned to the disseisor: in this case, howbeit that the disseisor die &c. and his heire is in by discent, yet may the disseisee distrain for the rent being behind, & haue the seruice: But if the tenant come to the disseisor, & say: we become your tenants &c. or otherwise make attournement to him &c. and after the disseisor dyeth seised &c. then the disseisee may not distrain for the rent, for this, that al the manor discended to the heir of the disseisor. But if one hold of me by rent seruice, which is a seruice in grosse, & an other that no right hath, claimeth the rent and receiueth and taketh the same rent of my tenant by coher sion of distresse, or by other forme, and so disseiseth me by taking such rent, howbeit that such a disseisor die seised by such taking of the rent, yet after his death I may well distrain for the same rent being behind before the death of the disseisor, and also after his death: & the cause is this, that such is not my disseisor, but by election at my will; for howbeit that he take the rent of my tenant, I may at all times distrain my tenant for the rent behind &c. so it is to me, but as if I wil suffer the tenant to be so much time behind of payment to me of the same rent: for the payment of my tenant to an other to whom he ought not to pay, is no disseisin to me, nor shall not put me out of my rent without my will & election, for howbeit that I may haue Assise against such a taker &c. yet this is at my election if I will take him as my

disseisor

ssetloz oz not, so that such discents of rents in
rosse ne putteth not out the Lozds from their
sdresse, but that at each time they may well
straine foz the rent behind: And in this case
after the decease of him that so wzongfully
ke the rent, I graunt by my deed the serui-
s to an other, and the tenant attourneth, this
good ynough, & the seruices by such graunt
attournement, incontinent be in the graunteé
. But otherwise it is where the rent is par-
ll of the manour, and the disseisoz dieth seised
the whole manoz, as in the case beforesaid.

Discontinuance.

Discontinuance is an auncient wozd in the
law, and hath diuers significations &c. but
to one intent it hath such a signification.
at is to say, where a man hath alened to an
her certaine lands oz tenements and dieth,
d another hath right to haue the same lands
tenements, but he ne may enter in them, be-
se of such alienation &c. As if an Abbot be
sed of certaine lands & tenements in fee, and
alieneth the same lands & tenements to an
her in fee, oz in taile, oz foz terme of life, & the
bbot dieth, his succesloz may not enter in the
ne landes and tenements, howbeit that he
e right to haue them as in the right of the
se, but he is put to his action to recouer the
ne lands oz tenements which is called a
it de Ingressu sine assensu Capituli.

And if a man be seised of lād as in the right of his wife &c. and thereof infeoffeth an other &c. and dieth, the wife may not enter, but she is put vnto her action, the which is called Cui in vita. See Stat. 32. H. 8. cap. 28. Leases.

Also, if tenant in the taile of certaine land thereof infeoffe another &c. and hath issue and dieth &c. his issue may not enter in the land, howbeit that he hath right and title to the, but that he is put to his action, that is called a Formedone in the discender.

Also, if there be tenant in taile, and the reuersion is to the donour and to his heires, if the tenant make a feffemēt &c. and dieth without issue, he in the reuersion may not enter, but is put to his action of Formedon in the reuerter. And in the same maner it is wher there is tenant in ꝑ taile of certaine land where the remainder is to an other in the taile, or to an other in fee, if the tenant in the taile alienate in fee, or in fee taile &c. and after dieth without issue, they in the remainder may not enter, but be put to their writ of Formedon in the remainder &c. and for this that by force of such feoffement and such alienations in the cases aforesaid, and in like cases those which have title and right after the death of such a feoffor or alienor may not enter, but be put to their actions vt supra, therefore such feoffements and alienations be called discontinuances.

Also, if a tenant in the taile be disseised, & he releaseth by his deed to the disseisour, & to his heires

heires all the right ỹ he hath in the same land, this is no discõtinuance, for this that nothing of right passeth to the disseisor but for terme of life of the tenant in the taile that made the release &c. But by the feoffement of tenant in the taile a fee simple passeth by the same feoffemẽt by force of liuery of seisin &c. but by force of a releas, nothing passeth but the right ỹ he may lawfully & rightfully releas without hurt or damage to other persons which thereto haue right after his deceale &c. & so it is a great diuersitie betweén a feffemẽt of the tenant in the taile, & a releas of the tenant in the taile. But it is said, that if tenant in the taile in this case releale to the disseisor, and bindeth him & his heires to warrantize &c. and dieth, & this warranty discendeth to his issue, then that is a discontinuance because of warrantize &c. But if a man haue issue a sonne by one wife which dieth, & after he taketh another wife, & the tenements be giuen to him & his second wife, and to the heires of their two bodies engendred, & they haue issue an other sonne, then the second wife dieth, and after the tenant in the taile is disseised, and he releaseth to his disseisor all his right &c. and bindeth him and his heires vnto warrantize, and dyeth; this is no discontinuance to the issue in the taile by the second wife, but hee may well enter &c. for this that the warrantize discended to his elder brother that his father had by his first wife.

In the same manor where the tenements be

descendable to ỹ yonger son after the custome of borough English, which be intailed &c. & the tenant in ỹ taile hath issue 2. sons & is disseised, & he releaseth to his disseisor all his right with warranty & dieth the yonger son may enter upon ỹ disseisor notwithstanding the warrantie, for this that the warrantize discendeth to the elder son, for alway the warrantize discendeth &c. to him that is heire by the common law.

Also, if an Abbot be disseised, & hee releaseth to the disseisor with warrantize, this is no discontinuance to his successour, for this that nothing passeth by this release but the right that hee hath during the time that he is Abbot and this warrantize is expired by his priuation or by his death.

Also, if tenant in the taile be seised of certain land, and hee letteth the same land for terme of yeeres, by force of which lease the lessee is in possession, to which possession the tenant in the taile by his deed releaseth all his right that he hath in the same land to the lessee and to his heires for euer, this is no discontinuance, but after the decease of the tenant in the taile, his issue may well enter, for this that by such releas nothing passeth but for terme of life of the tenant in the taile. In the same manner if the tenant in the taile confirme the estate of the lessee for terme of certaine yeres to haue and to hold to him and to his heires, that is no discontinuance, for this that nothing passeth by such confirmation, but the estate that the te-

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nant in the tayle had for terme of his life.

Also, if a tenãt in the taile by his deed grant to an other all his estate that he hath in the tenements entailed to him, to haue & to hold all his estate to the other & to his heirs for euer, & deliuereth seisin accordingly. In this case the tenant to whõ the alienation was made, hath none other estate but for terme of life of the tenant in taile, & so it may well be proued ỹ the tenant in the taile may not graunt ne alien ne make any rightful estate of the franktenement to an other person but for term of his own life &c. For if I giue certaine land in the taile to a man, sauing a reuersion to mée, & after the tenant in the taile enfeoffeth an other in fée, the feoffée hath no right estate in the tenemẽts, for two causes. One is for that that by such feffement my reuersion is discontinued, which is a wrong act & not a rightfull act. Another cause is, if the tenant die, and his issue sueth a writ of Formedon against the feoffée, the writ shall say & also the declaration, that the feoffée wrongfully him defforced, therefore if wrongfully hee him defforced, he had no right estate.

Also, if land be let to a man for terme of his life, the remainder to an other in the taile, if hée in the remainder wil graunt his remainder to another in fée by his deed, and the tenaunt for terme of life attorneth, this is no discontinuance of the remainder.

Also, if a man be tenãt in the taile of auowson in grosse or of cõmon in grosse, if hée by his deed

deed will grant the aduowson or the common to an other in fee, this is no discontinuance, for in such case the grantee hath no estate but for terme of life of the tenãt in the taile that made this grant &c. Note well that such things as passe by way of graunt made by deed, made in the countrey &c. such grant maketh no discontinuance as in the case aforesaid, & other like cases &c. And howbeit that such be granted in fee, by fine leuied in the kings court &c. yet they make no discontinuance &c.

Also, if a man be seised in the tayle of landes deuiseable by testament &c. and hee deuiseth it to an other in fee, and dieth, and the other entreth, this is no discontinuance, for this that no discontinuance was made in the life of the tenant in the taile &c.

Also, if an Abbot haue a reuersion or a rent seruice, or a rent charge, and will graunt that reuersion, rent seruice, or rent charge to another in fee, and the tenant attorneth &c. this is no discontinuance. In the same manner it is where an abbot is seised of an aduowson, or of such things that passe by way of graunt without liuery of seisin &c.

Also, if there be Graundfather tenant in the tayle, father and sonne, and the graundfather is disseised by the father, and the father maketh a feoffement in fee without warrantize and dyeth, and after the graundfather dyeth, the sonne may well enter vpon the feoffee, for this that this was no discontinuance, in

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so much that the father was not seised by force of the taile at the time of the feoffement &c. but was seised in fee by disseisin made to the graundfather.

Also, if a woman inheritrix haue an husband within age, which maketh a feoffement of the tenements of the wife and dieth, it hath been questioned if the wife may enter or not. And it seemeth to some men that the entrie of the wife after the death of her husband shalbe lawful in this case, for when her husbād made such a feoffement &c. he might well enter notwithstanding such feoffement during the coverture, and he might not enter in his owne right, but in the right of his wife &c. Ergo such right that he had to enter in the right of his wife &c. that right of entrie abideth to the wife &c. after his decease. And it hath been said, that if two Iointenants being within age, make a feoffement in fee, and one of the children dieth, and the other suruiueth, insomuch that both children might enter iointly in their liues, this right of entrie groweth all to him that suruiueth, and so he may enter into the whole &c.

Also, the heire of the husband that made the feoffement within age may not enter, for this that no right discendeth to such an heire in the case aforesaid, for this that the husbād had neuer any thing but in the right of the wife. And also when a child maketh a feoffement being within age, this shall neuer grieue nor hurt him, but that he may well enter &c. & this should be

be against reason, that such a feoffement made by him that was not able to make such a feoffement shall grieue or hurt other, to tolle other of their entries &c. And for these causes it seemeth to some, that after the death of such an husband so being within age at the time of the feoffement &c. that his wife may well enter &c.

Also, if a woman inheritrix taketh an husband and hath issue a sonne, and the husband dieth, and she taketh an other husband, and the second husbād letteth the land that he hath in the right of his wife to an other for terme of his life, and after the wife dieth, and after the tenant for terme of life surrendreth his estate to the second husband &c. Inquire if the sonne of the wife may enter or not, in this case vpon the second husband during the life of the tenāt for terme of life. But it is cleere law in this case, that after the death of the tenant for term of life, the sonne of the wife may well enter, for this that the discontinuance that was made all onely for terme of life is determined by the death of the same tenant for terme of life &c.

Also, if the Parson or vicar of a church alien certain lands or tenements parcel of his glebe &c. to an other in fee and dieth, or resigneth &c. his successor may well enter, notwithstanding such alienation, as it is said in a Note Anno 2. H. 4. Termino Mich. quæ sic incipit Nota quod dictum fuit pro lege, In a writ of Accompt brought by the Master of a Colledge, that if a parson or a vicar grant certaine land

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that is of the right of his church to an other, & dieth, or chãgeth, that his succesſor may enter: And I trow the cauſe is for this, that the parſon or vicar that is ſeiſed &c in right of the Church hath no right of the fee ſimple in the tenements, but the right of the fée ſimple abydeth in an other perſon: And for this cauſe his ſucceſſor may wel enter, notwithſtanding ſuch alienation &c. for a Biſhop may haue a writ of right of tenements of right of his biſhoprycke, for this, that the right of fée ſimple abideth in him & in his Chapter. And a Dean may haue a writ of right &c. for this that the right abideth in him & in his Chapter. And an Abbot may haue a writ of right, for this that the right abideth in him, & in his Couẽt, & ſic de alijs caſib' conſimilib' &c. but a parſon or a vicar may not haue a writ of right &c. but ꝑ higheſt writ that they may haue is a writ de Iuris vtrũ, ꝑ which is a great ꝓwfe, that the right of fée ſimple is in abeiãce, that is to ſay, all only in the remembrance, intendemẽt, & conſideration of the law: for me ſeemeth that ſuch a thing in ſuch a right that is ſaid in diuers bookes to be in abeiãce, is as much to ſay in latin, s. talis res, vel tale rectũ quę vel qd' non eſt in homiñ adtunc ſuperſtite, ſed tantummodo eſt & conſiſtit in conſideratione & intelligẽtia legis &c. & quidã alij dixerũt talem rem, aut tale rectum fore in nubibus &c. But I ſuppoſe that they vnderſtand theſe wordes in nubibus &c. as I haue ſaid before.

Alſo, if a Parſon of a Church die, now the frank-

be against reason, that such a feoffement made by him that was not able to make such a feoffement shall grieue or hurt other, to take other of their entries &c. And for these causes it seemeth to some, that after the death of such an husband so being within age at the time of the feoffement &c. that his wife may well enter &c.

Also, if a woman inheritrix taketh an husband and hath issue a sonne, and the husband dieth, and she taketh an other husband, and the second husbād letteth the land that he hath in the right of his wife to an other for terme of his life, and after the wife dieth, and after the tenant for terme of life surrendreth his estate to the second husband &c. Inquire if the sonne of the wife may enter or not, in this case vpon the second husband during the life of the tenāt for terme of life. But it is cleére law in this case, that after the death of the tenant for term of life, the sonne of the wife may well enter, for this that the discontinuance that was made all onely for terme of life is determined by the death of the same tenant for terme of life &c.

Also, if the Parson or vicar of a church alien certain lands or tenements parcel of his glebe &c. to an other in fée and dieth, or resigneth &c. his successor may well enter, notwithstanding such alienation, as it is said in a Note Anno 2. H. 4. Termino Mich. quæ sic incipit Nota quod dictum fuit pro lege, In a writ of Accompt brought by the Master of a Colledge, that if a parson or a vicar grant certaine land

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that is of the right of his church to an other, & dieth, or chãgeth, that his succesſor may enter: And I trow the cauſe is for this, that the parſon or vicar that is ſeiſed &c in right of the Church hath no right of the fee ſimple in the tenements, but the right of the fée ſimple abydeth in an other perſon: And for this cauſe his ſucceſſor may wel enter, notwithſtanding ſuch alienation &c. for a Biſhop may haue a writ of right of tenements of right of his biſhoprycke, for this, that the right of fée ſimple abideth in him & in his Chapter. And a Dean may haue a writ of right &c. for this that the right abideth in him & in his Chapter. And an Abbot may haue a writ of right, for this that the right abideth in him, & in his Couẽt, & ſic de alijs caſib' conſimilib' &c. but a parſon or a vicar may not haue a writ of right &c. but ꝑ highelt writ that they may haue is a writ de Iuris vtrũ, ꝑ which is a great ꝓwfe, that the right of fée ſimple is in abeiãce, that is to ſay, all only in the remembrance, intendemẽt, & conſideration of the lawe: for me ſéemeth that ſuch a thing in ſuch a right that is ſaid in diuers bookes to be in abeiãce, is as much to ſay in latin, s. talis res, vel tale rectũ quę vel qd' non eſt in homiñ adtunc ſuperſtite, ſed tantummodo eſt & conſiſtit in conſideratione & intelligẽtia legis &c. & quidã alij dixerũt talem rem, aut tale rectum fore in nubibus &c. But I ſuppoſe that they vnderſtand theſe wordes in nubibus &c. as I haue ſaid before.

Alſo, if a Parſon of a Church die, now the frank-

franktenement of the glebe of the parsonage is in no man, during the time that the parsonage is void, but is in abeiance, that is to say in consideration and intelligence of the Law till an other be made Parson of the same Church, & immediatly when an other is parson, the frãktenement in deed is to him as successor.

Also, some men peraduẽture will argue and say, that inasmuch that the parson with thassent of the patron and ordinary, may graunt a rent charge out of the glebe of his parsonage in fé, & so charge the glebe of his parsonage perpetually, Ergo they haue fee simple, or ij. or one of them hath fée simple at the least &c. so thus it may be answered, that it is a principle in law, that of euery land there is a fée simple in some man, or else the fée simple is in abeiãce &c. And another principle is, that euery land of fée simple may be charged with a rent charge in fé, by one way or by an other &c. & when such rent is granted by the deed of the parson, the patron & the ordinary in fée, none shall haue no preiudice nor losse by force of such graunt, but the grauntors in their liues, & the heire of the patron, & successor of the ordinary after their deceases, & after such charge, if the parson die, his successor may not come to the same Church to be parson of the same church by the law, but by presentment of the patron, and admission & institution of the ordinary &c. And for this cause it behoueth that the successor hold him content and agréed with that which his patron and ordi-

ordinary lawfully haue done before. But the cause that such rent charge is gone, is for this, that they which haue entries in ꝑ said church, that is to say, the Patron after the law temporall, and the Ordinary after the law spirituall, were assented as parties vnto such a charge &c. and this séeth the very cause that such glebe may be charged in perpetuitie &c. See Stat. 13. Eliz. cap. 20.

Also, if a Bishop alien lands which bin parcell of his Bishoprieke, and dieth, this is a discontinuance to his successor, for this, that hē may not enter, but is put to his writ de Ingressu sine assensu capituli &c. See Stat. 1. Eliz.

Also, if a Deane alien land, parcell of his Deanry, and dieth, his successor may not enter, but he may haue a writ de Ingressu sine assensu capituli &c. See Stat. 13. Eliz. cap. 10.

But if the Deane & the Chapter haue land to them and to their successors in common &c. Howbeit that the Deane alien such lands, his successors may well enter, for this, that the franktenement at the time of the alienation, was aswell in the Chapter, as in the Deane. But where the Dean is sole seised as in right of his Deanry, then such alienation is discontinuance to his successor, as it is aforesaid.

Also, some men will argue & say, that if an Abbot & his Couent be seised in their demeane as of fée, of certain land to them & to their successors &c. & the Abbot without assent of his Couent alieneth the same land vnto an other,

and

and dieth, this is a discontinuãce to his succes-
sors &c. & by the same they will say, that where
a Deane & a Chapter is seised of certaine lands
to them & to their successors, if the Dean alien
the same lands &c. this shalbe a discontinuance
to his successors, so that his successor may not
enter &c. To this may be answered, that there
is a great diuersity betweene ỹ said 2. cases, for
when an Abbot & the Couent be seised &c. yet
if they be disseised, the Abbot shal haue assise in
his owne name, without the naming of his Co-
uent &c. And if a mã may or will sue a Præcipe
qd' reddat of the same lands whẽ they be in the
hands of the Abbot & his Couent, it behoueth
that such an action bée sued against the Abbot
only without naming of the conẽt &c. for this,
that all they be dead persons in the Law, sauing
only the Abbot that is soueraigne &c. and this
is because of the soueraignty &c. for else he
should be as the other Monkes of the Co-
uent &c. But the Deane & the Chapiter be as
dead persons in the law &c. For each of them
may haue an action by himself in diuers cases,
and of such landes or tenements which the
Deane and Chapiter haue in common &c. if
they be disseised, that the Deane & the Chapi-
ter shal haue Assise, & not the Deane alone, and
if an other will haue an actiõ real of such lands
or tenements against the Dean &c. it behoueth
him to sue against the Deane and Chapiter, &
not against the Deane alone &c. & so appe-
reth great diuersity betweene these two cases.

Also,

Also, if the Master of an Hospitall discontinue certaine land of his Hospital, his successor may not enter, but he is put vnto his writ De Ingressu sine assensu confratrum & sororum sibarum. And all such writs doe plainly appears in the Register &c.

¶ Remitter.

REmitter is an auncient terme in the Law, and it is where a man hath two titles to lands or tenements, that is to say, one of an elder title, and an other of a latter title, and he commeth to the land by the latter title, yet the law adiudgeth him to be in by force of the elder title, for this, that the elder title is the more sure title, and the more worthy title, and then when a man is iudged in by force of the more elder title, this is vnto him said a Remitter, for this, that the Law shall admit him to be in the land by the elder title: as if the tenaunt in the taile discontinue the taile, & after he disseiseth his discontinuee, & so dieth seised, whereby the tenements discend to his issue, or to his cosin inheritable by force of the tayle: in this case this is to him to whom the tenements discend which had right by force of the tail, a Remitter in the taile taken, for that, that the law shall put & adiudge him to be in by force of the taile, which is his elder title: for if he shalbe in by force of discent, then the discontinuee may haue a writ of Entry vpon the disseisin in the Per against him, & recouer the tenements, and his

his dammages, but insomuch that hee is in by force of the taile, the title and the interest of the discontinuee is all vtterly admulled and defeated &c.

Also, if tenant in the taile infeoffe in fee his sonne or his cosin inheritable by force of the taile, the which sonne or cosin at the time of the feoffement is within age, and after the tenant in the taile dieth, and hee to whom the feoffement was made is his heire by force of the title in the taile, this is a Remitter to the heire in the taile, to whom the feoffement is made: For howbeit that during the life of the tenant in the taile that made the feoffemēt, such heire shalbe adiudged in by force of the feffemēt, yet after the death of the tenant in the taile, ẏ heire shalbe adiudged in by force of the taile &c. and not by force of the feoffement, and though that such an heire was of full age at the time of the death of the tenaunt in the taile that made the feoffement, this maketh no matter, if the heire were within age at the time of the feoffement made to him. And if such an heire being within age at the time of the feffement commeth to ful age, liuing the tenant that made the feoffement, & so being of full age, hee chargeth by his deed the same land with a common of pasture, or with a rent charge, and after the tenant in the taile dieth. Now it seemeth that the land is discharged of the common, and of the rent, because the heire is in by an other estate in the land, then hee was at the time of the charge

made,

made, insomuch that he is in his remitter by force of the taile, & so the estate that he had at the time of the charge is vtterly defeated &c.

Also a principall cause why such an heire in the cases aforesaid, and other cases semblable shall be said in his Remitter, is for this, that there is no person against whom that he may sue his writ of Formedon, for against himselfe he may not sue, & he may not sue against none other, for none other is tenant in the franktenement, and for that cause the law adiudgeth him in his Remitter, that is to say, in such plight, as he had lawfully recouered the same land against an other.

Also, if land be tailed to a man and his wife, and to the heires of their two bodies engendred, the which haue issue a daughter, and the wife dieth, and the husband taketh an other, and hath issue an other daughter, and discontinueth the taile, and after he disseiseth the discontinuee, and so dieth seised, now the land discendeth to the two daughters: In this case as to the elder daughter that is inheritable, this is a remitter but of the halfe, & as to the other halfe, shee is put to her action of Formedon against her sister, for in this case two sisters be not tenants is parcenary, but be tenants in common, for this that they be in by diuers titles, for the one sister is in her Remitter by force of the taile as to that that vnto her belongeth: And the other sister is in, as to that that belongeth to her, in fee simple by the dis-

diſcent of her father. In the ſame maner it is if the tenant in the taile, infeoffe his heire apparant in the taile, the heir being within age, and an other iointenant in fée, & the tenant in the taile dieth, now the heire in the taile is in the Remitter, as to the halfe, and as to the other halfe he is put to his writ of Formedon &c.

Alſo, if a tenant in the taile infeoffe his heire apparant, the heire being at full age at the time of the feoffement, & after the tenant in the taile dieth, this is no Remitter to the heire, for this that it was his owne folly, that he being of full age would take ſuch feoffement &c. But ſuch folly may not be adiudged in the heire being within age at the time of the feoffement &c.

Alſo, if a tenant in the taile infeoffe a woman in fée, and dieth, & his iſſue within age taketh the woman to wife, this is a Remitter to the child, and the wife then hath nothing, for this that the husband & the wife be but one perſon in the law: And in that caſe the husband may not ſue a writ of Formedon, vnleſſe he will ſue againſt himſelfe, the which ſhall be inconuenient, and for that the Law iudgeth the heire in his Remitter, for this, that no folly may be arretted to him being within age at the time of the ſpouſals &c. And if the heire be in his Remitter by force of the taile, it followeth by reaſon that the wife hath nothing &c. for inaſmuch that the husband & the wife be but one perſon, the land may not be ſeuered by halues, and by ſuch cauſe the husband is in his Remitter of the

the whole. But otherwise it is, if such an heire be of full age at the time of the spousals, then the heire hath nothing but in the right of his wife.

Also, if a woman seised of certaine land in fée taketh an husband, the which alieneth the same land to an other in fée, and the alienée letteth the same land to the husband and the wife for terme of their two liues, sauing the reuersion to the lessor and to the heire, in this case the wife is in her remitter, and shée is seised in déed in her demesne as in fée, as shée was before, for this, that the taking of estate shal be adiudged in the law the déed of the husband, and not the déed of the wife, so that no folly may be iudged in the wife that is couert in such case: And in this case the lessour hath nothing in the reuersion, for this that the wife is seised in fée. But in this case, if the lessour will sue an action of waste against the husband and his wife, for this that the husband hath made waste, the husband may not barre the lessour for to shew this, that the taking of estate made vnto him and to his wife, made a Remitter to his wife, for this that the husband is stopped to say this against his feoffement and owne repugnell of estate for terme of life to him and his wife, and yet the lessour hath no reuersion, for this that the fée simple is in the wife. So a man may sée a matter in this case, that a man shall be estopped by a matter in déede, though no writting by déede indented, or

or otherwise be thereof made. But if in an action of waſt the husband make default at the graund diſtreſſe, and the wife prayeth to be receiued, and is receiued, she shall well ſhew all the matter, and how shee is in her Remitter, and shall barre the leſſor of his action: for in euery caſe that the wife is receiued by default of her husband, shee shall plead and haue the ſame aduantage in pleading, as shee were a woman ſole. And howbeit that the alienee made no leas to the husband and his wife by deede indented, yet this is a Remitter to the wife, and though the alienee yelded the ſame land to the husband and his wife by fine for terme of their liues, yet this is a Remitter to the wife, for this that the wife couert that taketh eſtate by fine shall not be examined by the Iuſtices. And here note well, that when any thing shall paſſe from the wife that is couert of husband by force of a fine, as the husband & wife make conuſance of right to an other, or make a grant to yeld to an other, or releas by a fine to an other, & ſic de ſimilibus, where the right of the wife paſſeth from the wife by force of the ſame, the wife in all ſuch caſes shall be examined before that the fine be accepted. And ſuch fines conclude ſuch wiues couert for euer. But where nothing is moued in the fine, but all only that the husband & the wife take eſtate by force of the ſame fine, this shall not conclude the wife, for this that in ſuch caſe she shall neuer be examined.

Also, if tenant in the taile discontinue in the taile, & hath a daughter, & dyeth, & the daughter being of full age taketh an husband, & the discontinuee maketh a leas of this to the husband & his wife for terme of their lines, this is a Remitter in deed to the wife, and the wife is in by force of the taile, Causa qua supra.

Also, if land be giuen to the husband and his wife, to haue and to hold to them and to the heires of their two bodies begotten, and after the husband alieneth the land in fee, and taketh againe an estate to him & to his wife for terme of their two lines. In this case this is a Remitter in deed to the husband & the wife, manger the husband, for it may not be a Remitter to the wife, except it be a Remitter to the husband, for this that the husband and his wife be but one person in the law, though that the husband is stopped to claime this to be a Remitter in him against his alienation, and his owne repriell, as is aforesaid.

Also, if land be giuen to a woman in the taile, the remainder to an other in the taile, the remainder to the third in the taile, the remainder to the fourth in fee, & the wife taketh one husband, & the husband discontinueth the land of his wife, by this discontinuance al the remainders be discontinued, for if the wife die without issue, they in ye remainder shal haue no remedy, but to sue their writs of Formedon in the remainder whē they come to their time &c. But if after such discontinuance, estate be made to

the husband and his wife for terme of their two lines, or for terme of an other life, or an other estate &c. for this, that this is a Remitter to the wife, this is a Remitter to all those in the remainder &c. For after that the wife, that is in her Remitter, dyeth without issue, they in the remainder may enter &c. without any action or suit &c. In the same manner it is of them which haue the reuersion after such taile &c.

Also, if a man let a house to a woman by terme of her life, sauing the reuersion to the lessor, & after one sueth a faint and false action against the woman, and recouereth the house against her by default, so that the woman may haue against him a writ of Quod ei deforceat, after the Statute of westminster the second chapter 4. now is the reuersion of the lessor discontinued, so that hee may not haue an action of waste. But in this case if the woman take an husband, and hee that recouereth letteth the house to the husband and his wife for terme of their two lines, the wife is in her Remitter by force of the first lease. And if the husband and the wife make waste, the first lessor shall haue against him a writ of waste by this, that inasmuch that the wife is in her Remitter, hee is remitted to his reuersion. But it seemeth in this case, if he that hath recouereth by the false action, will bring an other writ of waste against the husband and his wife, the husband hath no remedie against him,

him, but to make default at the great distresse &c. and to cause the wife to be receiued and to plead the matter against the second iessor, and to shew that the action by which he recouered was false and fayned in the law, and so the wife may barre &c.

Also, if the husband discontinue the land of his wife, and after taketh estate to him and to his wife, and a third man for terme of their liues, or in fee, this is a Remitter to the woman but as to the moitie. And as for the other moitie it behoueth her after the death of her husband to sue a Cui in vita.

Also, if the husband discontinue the land of his wife, and go ouer the Sea, & the discontinuée let the same land to the woman for terme of life, and deliuer to her seisin, and after the husband commeth and agreeth to that liuery of seisin, this is a remitter to the woman, and yet if the woman had been sole at that time of her Lease made to her, this should be to her no Remitter, but inasmuch as shee was couert baron, at the time of the lease, and the liuery of seisin made to her, though that she only take the liuery of seisin, this was a Remitter to her, because a woman couert shall be adiudged as an Infant within age in such case &c. Inquire in this case if the husband when he commeth againe will disagree to the lease and liuery of seisin made to his wife in his absence, if this shall put the woman from her Remitter.

Also, if the husband discontinue the tene-

ments

ments of his wife, and the discontinuée is seised, and after the disseisor letteth the said tenements to the husband & his wife for terme of life, this is a Remitter to the wife: but if the husband and the wife were of couin or consent that the disseisin should be made, then it is no Remitter to the wife, because she is a disseisoresse. But if the husband were of couin consent to the disseisin, and not the wife, then such lease made to the wife is a Remitter, because that no default was in the wife.

Also, if such a discontinuée had made estate of freehold to the husband & the wife, by Indenture upon condition. &c. reserving to the discontinuée a certaine rent, and for default of payment a reëntrie. and because that the rent is behind, the discontinuée entreth, of this rent the woman shall haue Assise of Nouel disseisin, after the death of her husband against the discontinuée, because that ỹ condition was wholy annulled, insomuch as the woman was in her remitter, yet the husband with his wife could not haue assise, because the husband is stopped.

Also, if the husband discontinue the tenements of his wife, and taketh estate again for terme of his life, the remainder after his decease to his wife for terme of her life, in this case this is no Remitter to the wife during the life of her husband, because that during the life of the husband, the wife hath nothing in the freehold, but if in this case the wife ouerliue the husband, this is a Remitter

to

to the wife, because that a freehold in law is fallen vpon her mauger her will, & insomuch that she can haue no action against none other person, and against her selfe shee can haue no action, therefore shee is in her Remitter, for in this case though that ye woman enter not into the tenements, yet a stranger that hath cause to haue action, may sue his action against the woman of the same tenements, because shee is tenant in law, though shee be not tenant in deed, for tenant of franktenement in deed is he, that if he be disseised of franktenement may haue Assise, but the tenant in the law before his entrie shall haue no Assise: & if a man seised in fee of certaine land hath issue a sonne which taketh a wife, and the father dyeth seised, and after the sonne dieth before any entrie made by him into the land, the wife of the sonne shall be endowed in the land, & yet he had no franktenement in deed, but he had a fee & a franktenement in law. And note well, that a Præcipe quod reddat may be aswell maintained against him that hath the franktenement in law, as against him that hath franktenement in deed.

Also, if a tenant in the taile haue issue two sonnes of full age, and he letteth the tayled land to the elder sonne for terme of his life, the remainder to the yonger sonne for terme of his life, and after the tenant in the taile dieth: In this case the elder son is not in his remitter, because he tooke estate of his father, but if the elder sonne die without issue of his body, then

then this is a remitter of the younger brother, because he is heire in the taile, and a franktenement in law is fallen vpon him by force of the remainder, & there is none against whom he may sue his action &c. In the same manner it is where a man is disseised, and the disseisor dieth thereof seised, and the tenements discend to his heire, and the heire of the disseisor maketh a leas to a man of the said tenements for terme of life, the remainder to the disseisee in terme of life, or in taile, or in fee, and the tenant for terme of life dyeth, now this is a Remitter to the disseisee &c. Causa qua supra.

Also, if a tenant in the taile infeoffe his sonne and an other of the tailed land in fee, and liuery of seisin is made to the other according to the deede, the sonne not knowing therof, nor agreeing to the feoffement, and after he that toke the liuery of seisin dyeth, and the sonne occupieth not the land, nor taketh any profite of the land during the life of his father, and after the father dieth, now this is a Remitter to the sonne, because the freehold is fallen vpon him by the survivor, and no default was in him, because he never agreed &c. in the life of his father, and there is none against whō he may pursue his writ of Formedone &c. For if a man be disseised of certain land, and the disseisor maketh a deed of feoffement, whereof he infeoffeth B. C. and D. and the liuery of seisin is made to B. and C. but D. was not at the liuery of seisin, nor neuer

agreed

agreed to the feoffement, nor neuer would take the profits &c. And after B. & C. die, and D. ouerliueth them, and the disseisée bringeth his writ sur disseisin in the Per, against the same D. he shall shew all the matter, & how that he neuer agreed to the feoffement, and so he shall discharge himselfe of damages, so that the demandant shal recouer no damage against him, though that he be tenant of ye franktenemēt of the land: And yet the statute of Glocester wil, that the disseisée shal recouer damage in a writ of Entre, grounded vpon the Nouel disseisin, against him that is found tenant. And this is a proofe in the other case, that insomuch as the issue in the taile commeth to the franktenemēt not by his deed, nor by his agreement, but after the death of his father, this is a Remitter to him, insomuch that he can sue an action of Formedon against none other person.

Also if an Abbot alien the land of his house to an other in fee, and the alienée by his deed chargeth the land with a rent charge in fee, & after the alienée infeoffeth the Abbot with licence, to haue and to holde to the Abbot and his successours for euer, and after the Abbot dieth, and an other is chosen and made Abbot: In this case the Abbot that is successor & his Couent be in their Remitter, and shal hold the land discharged, because that the same Abbot cannot haue an action by his writ of Entre sine assensu Capituli of the same lands against none other person. In the same manner it is

where

where a Bishop, or Deane, or other such person alien &c. without assent &c. And after the Bishop taketh estate againe of the same land by licence to him, and to his successors, and after the Bishop dieth, his successor is in his Remitter as in the right of his Church, and shall defeat the charge &c. Causa qua supra.

Also, if a man sue a false action against tenant in the taile, as if a man will sue against him a writ of Entre in the Post, supposing by his writ that the tenaunt in the taile had no his entrie but by A. of B. that disseised the graund father of the demaundant, and that is false, and he recouereth against the tenant in the taile by default, and sueth execution, and after the tenant in the taile dieth, his issue may haue a writ of Formedon against him that recouered: and if hee will pleade the recouery against the tenant in the taile, the issue may say, that the said A. of B. disseised not the graund father of him that recouered in such maner as his writ supposeth, and so he shall fallifie his recouery. Also, suppose that the writ were true, that the said A. of B. disseised the graund father of the demandant that recouered, and that after the disseisin the demandant or his father, or his graund father by a deed had released to the tenant in the taile, all his right that he had in the land &c. And this notwithstanding he sueth his writ of Entre in the Post against the tenant in the taile, in the maner as is aforesaid; and the tenant in the taile

tayle pleadeth to him, that the said A. of B. disseised not his graundfather, as his writ supposeth: and vpon this they be at issue, and the issue is found for the demandant, whereby hee hath iudgement to recouer and sueth execution, and after the Tenant in the taile dieth, his issue may haue a writ of Formedon against him that recouered. And if hee will plead the recouery by action tryed against his Father tenant in the taile, then hee may shew and plead the release made to his Father, and so the action that was sued was faint in the Law &c.

And it seemeth that faint action is as much to say in English, as fained action that is to say, such action, that though the wordes of his writ be true, yet for certaine causes hee hath no cause nor title by the law to recouer by the same action. And false action is where the wordes of the writ be false: And in the two cases before said, if the case were such that after such a recouery and execution thereof made, the tenant in the taile had disseised him that recouered, and thereof died seised, whereby the land also diseended vnto his issue, this is a Remitter to the issue, and the issue is in by force of the tayle: And for that cause I haue put these two cases aforesaid, to insourme thee (my Sonne,) that the issue in the tayle, by force of a disent made to him after a recouerie and execution thereof made against his auncester, may be aswell in his Remitter, as

as he should by discent made to him after a dis-
continuance made by the auncester of the tay-
led land by feoffement in the countrey, or other-
wise.

Also, in the same case aforesaid, if the case
were such that after the demandant hath iudge-
ment to recouer against the tenāt in taile, and
the same tenant in the taile died before any ex-
ecution had against him, whereby the tene-
ments discend to his issue, and he that recou-
red sued a Scire facias to haue execution of the
iudgement against the issue in the taile, the is-
sue shall plead the matter, as before is said, and
so shall proue that the recouery was false or
faint in the law, and so shall barre him to haue
execution of the iudgement &c.

Also, if the tenāt in the taile discontinue the
taile and die, and his issue bringeth a writ of
Formedon against the discontinuée being te-
nant of the freéhold of the land, & the discon-
tinuée pleadeth that he is not tenant, but other-
wise disclaimeth from the tenancy in the land,
in this case the iudgement shall be, that the te-
nant goe without day, & after such iudgement,
the issue in ye taile that is demandant may well
enter in the land, notwithstanding the discon-
tinuance. And by such entry he shalbe adiudged
in his Remitter, & the cause is, because that if
any man sue a Præcipe qd' reddat against any
tenant of freéhold, in which action the deman-
dant shall not recouer damages, & the tenant
pleadeth Nontenure, or otherwise disclaim-
eth

meth in the tenancy, the demandant may not auerre in the writ, that he is tenãt as the writ suppoſeth. And for that cauſe the demandant after that the iudgement is giuen, that the tenant ſhall goe without day, may enter into the tenements demaunded, the which ſhall be as great aduantage to him in the law, as if hee had iudgement to recouer againſt the tenant. And by ſuch entrie hee is in the Remitter by force of the taile: but where the demandant recouereth dammages againſt the tenant, there the damaundant may auerre that hee is tenant as the writ ſuppoſeth, and that for the aduantage of the demandant for to recouer his dammages, or elſe he ſhall not recouer his dammages, the which dammages be or were giuen him by the law.

Alſo, if a man be diſſeiſed, and the diſſeiſor dye, his heire being in by diſcent, now the entrie of the diſſeiſee is taken away. And if the diſſeiſee bring his writ of Entre vpon the diſſeiſin in the Per againſt the heire, & the heire diſclaimeth in the tenancy &c. the demandant may auerre his writ, that hee is tenant as the writ ſuppoſeth, if hee will, for to recouer his damages. But yet if he will leaue the auerrement &c. he may lawfully enter into the land, becauſe of the diſclaimer, notwithſtãding that his entrie before was taken away. And that was adiudged before my Maſter Sir Robert Danby, late chiefe Iuſtice of the Common place, & his Compainions. 5. E. 4. fol. 1. & 41.

Also, where the entry of a man is lawfull, though that hée take estate to him when hée is of full age for terme of life, or in taile, or in fée, this is a Remitter to him, if such taking of estate be not by deed indented, or by matter of record that shall conclude or stop him: For if a man be disseised, and thereof taketh estate of the disseisor without deed, or by deed Poll, that is a good Remitter of the disseisée.

Also if a man let land for terme of life to an other, which alieneth to an other in fée, & the alienor maketh estate to ỹ lessor, this is a remitter to the lessor, because his entry was lawful.

Also, if a man be disseised, and the disseisor letteth the land to the disseisée by deed Poll, or without deed for terme of yéeres, whereby the disseisée entreth, this entry is a Remitter to the disseisée: for in such case where the entry of a man is lawfull, & a lease is made to him, though that hee claime by words in the countrey, that hee hath estate by force of such lease, or sayeth openly that hée claimeth nothing in the land, but by force of such lease, yet this is a Remitter to him, for such claime in the countrey is nothing to purpose: but if he claime in a court of Record that hee hath estate but by force of such leas and not otherwise, then he is concluded &c.

Also, if two Jointenants seysed of certaine land in fée, the one being of full age, the other within age be disseised, and the disseisor dyeth seised, and his issue entreth, the one of the

joint-

iointenants being then within age, and after that he commeth to ful age, the heire of the disseisor letteth the land to the same iointenants for terme of their liues, this is a Remitter as to the halfe to him that was within age, because that he is seised of the moitie that belongeth to him in fee, because his entrie was lawfull. But the other iointenant hath in the other halfe but estate for terme of life by force of the lease, because his entrie was taken away &c.

Warrantie.

IT is commonly said, that there be three maner of warranties, that is to say: warranty lineall, warranty collaterall, and warranty that beginneth by disseisin. And it is to wit, that before the statute of Gloucester, all warranties which discended to them which were heires to them that made the warranty, were barres to the same heires to demaund any lands or tenements against those warranties, except the warranties that began by disseisin, for such warrantie was neuer barre to the heire, because the warranty began by wrong, that is to say, by disseisin.

Warranty that beginneth by disseisin is in such forme: As where there is father & sonne, & the sonne doth purchase land &c. and letteth the same land to his father for terme of peres, and the father by his deed thereof infeoffeth an other in fee, and bindeth him and his heires to war-

warranty, & if the father die whereby the warranty discendeth to his sonne, this warranty shall not barre the sonne, for notwithstanding this warrenty, the sonne may well enter into the land, or haue an Assise against the alienée if he will, because the warranty began by disseisin: For when the father that had no estate but for terme of yeres made a feffement in fée, this was a disseisin to the son of the franktenemẽt that thẽ was in the sonne. In the same maner it is, if the sonne let vnto the father the land to hold at will, & after ỹ father maketh a feffemẽt with warrãty &c. And as it is said of ỹ father, so it may be said of euery other auncestor &c.

In the same maner it is if tenant by Elegit, tenant by statute marchant, or tenant by statute staple, maketh a feoffement in fée with warranty &c. this shal not barre the heire that ought to haue the land, because that such warranties begin by disseisin.

Also if a warden in chiualry, or warden in socage make a feffemẽt in fée, in fée taile, or for terme of life with warrãty &c. such warrãties be no bars to the heires to whom the land shal discend, because that they begin by disseisin.

Also, if the father & the sonne purchase certaine lands or tenements, to haue & to hold to them iointly &c. and after the father alieneth the whole to an other, and bindeth him and his heires to waranty &c. and after the father dieth, this warranty shall not barre the sonne of the moitie that belongeth vnto him of the same

tene-

tenemẽt, because that as to ꝯ moity that belonged to the son, the warrãty began by disseisin.

Also, if A. of B. be seised of a meale, and F. of G. that hath no right to enter in the same meale, claiming to hold the same meale to him & to his heires, enter into the same meale, but A. of B. then is continually dwelling in the same meale, in this case the possession of the franktenement shalbe alway adiudged in A. of B. & not in F. of G. because that in such case where two be in one meale, or in other tenements, & the one claimeth by one title, and the other by an other title, ꝯ law shall adiudge him in possession that hath right to haue the possession of the same tenement. But in the case aforesaid, if F. of G. make a feoffement to certain barretors & extortioners in the countrey for to haue maintenance of them of the same meale by a deed of feoffement with warranty, by force of which the said A. of B dare not dwell in the same meale, but goeth out of the same mese, this warrãty beginneth by disseisin, because that such a feffemẽt was cause that the said A. of B. left the possessiõ of the same mese.

Also if a man that hath no right to enter in an others tenements, enter into the said tenements, and incontinently maketh a feoffement to other persons by his deede with warranty, and deliuereth to them seisin, this warranty beginneth by disseisin, because that the disseisin and the feoffement were made as it were at one time. And that this is law, ye

may see it in a plee Anno 31. Ed. 3. in a writ of Formedon in the reuersion, Gar. Fitzh. 28.

Warranty lineall, is where a man seised of certaine lands in fee, maketh a feoffement by his deed to an other, and bindeth him and his heires to warranty, and hath issue & dieth, and the warranty discendeth to his issue, this is a lineall warranty: And the cause why this is a lineall warranty, is not because that the warrantie discendeth from the father to his heire, but the cause is, because that if no such deede with warranty had been made by the father, then the right of the tenements should discend to the heire, and the heire should conuey the discent from the father &c. For if there be father and sonne, and the sonne purchase tenements in fee, and the father disseiseth the sonne thereof, and alieneth it to an other in fee by his deed, and by the same deed bindeth him and his heires to warrant the same tenements and so forth, and the father dyeth, now is the sonne barred to haue the said tenements, for he may by no sute, nor by any other meanes haue the said tenements, because of the said warranty: And that is a collaterall warranty, and yet the warranty discendeth lineally from the father to the sonne. But because that if no such deed with warranty had been made, the sonne in no manner might conuey the title that he hath of the tenements from his father to him, insomuch that his father had no estate nor right in the tenements, there-

for:

lyze such warrantie is called collaterall warranty: Insomuch that he that made the warranty is collaterall to the title of the tenemẽts, and that is as much to say, that hee to whom warranty discended, could not conuey the title that he had in the tenements by him that made the warranty in this case, if no such warranty had been made.

Also, if there be graundfather, father, and sonne, & the graundfather is disseised, in whose possession the father releaseth by his deed with warranty &c. and dieth, and after the graundfather dieth, now is the sonne barred of the tenements by the warranty of his father, & this is called lineall warranty, because that if no such warranty had been made, the sonne might not haue conueyed the right of the tenements to him, nor shew how he is heire to the grandfather, but by meanes of the father &c.

Also, if a man haue issue three sonnes and is disseised, and the elder sonne releaseth to the disseisor by his deed with warrantie &c. and dieth without issue, and after this the Father dieth, this is a lineall warranty to the yonger sonne, because that though the elder sonne died in the life of the father, yet by possibilitie it might bee, that hee might conuey to him the title of the land by his elder brother, if no such warranty had been made: For it might be that after the death of the Father, the elder brother entred into the tenements and dyed without issue, and then the yonger sonne shall conuey to

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Warranty lineall, is where a man seised of certaine lands in fee, maketh a feoffement by his deed to an other, and bindeth him and his heires to warranty, and hath issues dieth, and the warranty discendeth to his issue, this is a lineall warranty: And the cause why this is a lineall warranty, is not because that the warrantie discendeth from the father to his heire, but the cause is, because that if no such deede with warranty had been made by the father, then the right of the tenements should discend to the heire, and the heire should enuey the discent from the father &c. For if there be father and sonne, and the sonne purchase tenements in fee, and the father disseiseth the sonne thereof, and alieneth it to an other in fee by his deed, and by the same deed bindeth him and his heires to warrant the same tenements and so forth, and the father dyeth, now is the sonne barred to haue the said tenements, for he may by no suite, nor by any other meanes haue the said tenements, because of the said warranty: And that is a collaterall warranty, and yet the warranty discendeth lineally from the father to the sonne. But because that if no such deed with warranty had been made, the sonne in no manner might conuey the title that he hath of the tenements from his father to him, insomuch that his father had no estate nor right in the tenements, there-

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Also, if there be graundfather, father, and sonne, & the graundfather is disseised, in whose possession the father releaseth by his deed with warranty &c. and dieth, and after the graundfather dieth, now is the sonne barred of the tenements by the warranty of his father, & this is called lineall warranty, because that if no such warranty had beén made, the sonne might not haue conueyed the right of the tenements to him, nor shew how he is heire to the grandfather, but by meanes of the father &c.

Also, if a man haue issue three sonnes and is disseised, and the elder sonne releaseth to the disseisor by his deed with warrantie &c. and dieth without issue, and after this the Father dieth, this is a lineall warranty to the yonger sonne, because that though the elder sonne died in the life of the father, yet by possibilitie it might bée, that hée might conuey to him the title of the land by his elder brother, if no such warranty had been made: For it might be that after the death of the Father, the elder brother entred into the tenements and dyed without issue, and then the yonger sonne shall conuey to

to him the title of his elder brother. But in this case, if the yonger son releas with warranty to the disseisor, and dieth without issue, this is a collateral warranty to the eldest sonne, because that of such land as was to ỹ other, the elder brother by no possibility might convey to him the title by meane of the yonger brother.

Also, if the tenant in the taile hath issue three sonnes, and discontinue the taile in fee, and the middle sonne releaseth by his deed to the discontinuee, and bind him & his heires to warrantize &c. and after the tenant in the taile die, and the middle dieth without issue, now is the elder sonne barred to haue any recouerie by a writ of Formedon, because that the warranty of the middle brother is collaterall to him, insomuch that he may by no maner convey to him by force of the tayle, any discent by the middle brother, and therefore it is a collaterall warranty. But if in this case the elder brother die without issue, now the yonger brother may well haue a Formedon in the discender, & recouer the same land, because that the warranty of the middle brother is lineall to the yonger brother, because it may be, that by possibilitie the middle brother may be seised by force of the tayle after the death of his elder brother, and then the yongest brother may convey his title of discent by the middle brother &c.

Also, if the tenant in the taile discontinue the taile, & hath issue and die, and the vncle of the issue releas to the discontinuee with warranty

and

and die without issue, this is a collateral warranty to the issue in the tayle, because that the warrantie discendeth vpon the issue, which cannot conuey himselfe to the tayle, by meane of his vncle.

Also if the tenant in the taile hath issue two daughters and die, and the elder daughter entreth into the whole, & thereof make a frossement in fée with warranty, and after the elder daughter dieth without issue: In this case the yonger daughter is barred, as to the moitie, and as to the other halfe shée is not barred, for as to the moitie that belongeth to the yonger daughter, shée is barred, because that as to the moitie that belongeth to her, shée cannot conuey ꝧ discent by the meanes of her elder sister. And therefore as to the moitie, this is collateral warranty, but as to the other moity which belongeth to her elder sister, by the same elder sister the warranty is no barre to the yonger sister, because that shée may conuey her discent as to that moitie that belongeth to her elder, by the same elder sister: And so as to that moitie that belongeth to the elder sister, the warranty as to that is lineall to the yonger sister.

And note well, that as to him that demaundeth fee simple by any of his auncestors, hée shall be barred by lineall warranty which discendeth vpon him, except he be restrained by some statute, but he which demandeth fée tayle by a writ of Formedon in the discender, shall not be barred by lineall warranties, except hée

haue

haue enough by diſcent in fée ſimple by the ſame anceſter that made the warrantie, but a collaterall warranty is a barre to him that demaundeth fée, and alſo to him that demandeth fée taile, without any other diſcent of fée ſimple, except in caſes that be reſtrained by the ſtatute, and other caſes for certaine cauſes, as ſhall be ſaid hereafter.

Alſo, if land be giuen to a man and to his heires of his body begotten, the which taketh a wife, and haue iſſue a ſonne betweene them, and the huſband diſcontinueth the taile in fée, and dieth, and after the wife releaſeth to the diſcontinuée in fée with warrantie and dyeth, and the warranty diſcendeth to the ſonne, this is a collaterall warranty. But if tenements be giuen to the huſband and the wife, and to the heires of their two bodies begotten, which haue iſſue a ſonne, & the huſband diſcontinueth the tayle, and dyeth, & after the wife releaſeth with warranty & dyeth, this warranty is but a lineall warranty to the ſon, for the ſonne ſhal not be barred in this caſe to ſue his writ of Formedon, except he haue enough by diſcent in fée ſimple by his mother, becauſe that their iſſu in a writ of Formedon ought to conuey to him the right as heire to his father and to his mother of their two bodies begotten, by forme of the gift. And ſo in ſuch caſe the warranty of the father, and the warranty of the mother, be but as lineall warranties to the heire ſo. And note well, y in euery caſe where a man dieth

deth tenements in fee taile by a writ of Formedone, if any of the issues in the taile that had possession, or that hath possession, make a warranty &c. if he that sueth the writ of Formedon might by any possibilitie by matter that might be in deed, conuey to him, by him that made the warranty by the forme of the gift: This is a lineall warranty, and not collaterall.

Also, if a man haue issue three sonnes, and he giueth land to the eldest sonne, to haue and to hold to him and to the heires of his body begotten, and for default of such issue, the remainder to the middle sonne, to him, and to the heires of his body begotten, and for default of such issue, the remainder to the yongest sonne, and to his heires of his body begotten, in this case if the eldest sonne discontinue the taile in fee, and binde him, and his heires to warrantie, and die without issue, this is a collaterall warranty to the middle sonne, and he shall be barred to demaund the same land by force of the remainder, because that the remainder is his title, and his eldest brother is collaterall to the title which beginneth by force of the remainder.

In the same maner it is if the middle sonne had the same land by force of the remainder, because that his eldest brother made no discontinuance, but dieth without issue of his body, and after the middle sonne maketh a discontinuãce with warranty &c. and dieth without issue, this is a collaterall warranty to the

yongest

yongeſt ſonne, and alſo in this caſe if any of the ſaid ſonnes be diſſeiſed, and the father that made the gift releaſe to the diſſeiſour all his right &c. with warranty, this is a collaterall warranty to the ſonne vpon whom the warranty diſcended, Cauſa qua ſupra. And ſo note well, that where a man that is collaterall to the title &c. releaſeth with warranty, this is a collaterall warranty.

Alſo, if the Father giue land to his eldeſt ſonne, to haue and to hold to him and to his heires males of his body begotten, the remainder to the ſecond ſonne &c. if the eldeſt brother alien in fée with warranty &c. and hath iſſue female & dieth without iſſue male, this is not a collateral warranty to the ſecond ſonne, nor ſhall not hurt him of his action by Formedon in the remainder, becauſe that the warranty diſcendeth to the daughter of the eldeſt ſonne, and not to the ſecond ſonne. For euery warranty that diſcendeth, diſcendeth to him that is heire vnto him which made the warranty by the common Law &c.

Alſo, if land be giuen to a man and to his heires males of his body begotten, and for default of ſuch iſſue the remainder thereof to his heires females of his body begotten, and after the donée in the taile maketh a feoffement in fée with warranty according, and hath iſſue a ſonne and a daughter and dieth, this warranty is but a lineall warranty to the ſonne, ſo demaund by writ of Formedon in the diſcender.

cender. And it is but lineall to the daughter to demaund the same land by writ of Formedon in the remainder, if her brother die without heire male, because that shee claimeth as heire female of the body of her father begotten. But in this case, if her brother in his life release to the discontinuee with warranty &c. and after die without issue, this is a collaterall warrantie to the daughter, because that shee cannot convey to her the right that she had by force of the remainder by any meane of discent by her brother, and therefore the brother is collateral to the title of his sister, and therefore his warranty is collaterall &c.

Also, I have heard say, that in the time of king Richard the second, there was a Justice in the common place dwelling in Kent, called Rickhil, that had issue diuers sonnes: and his intent was, that his eldest sonne should have certaine lands to him and to his heires of his body begotten, and for default of issue, the remainder to his second sonne, and so forth, and so the third sonne &c. and because that he would that none of his sonnes should alien or make warranty for to barre or to hurt the other that should bee in the remainder &c. He caused to be made an Indenture to such effect, that is to say, that the landes and tenements were given to his eldest sonne upon this condition, that if the eldest sonne alened in fee, or in fee taile &c. or any of his sons alened &c. that then their estate should cease & should be void,

void, and that then the said landes or tene-
ments immediately should remaine to the se-
cond sonne, and to the heires of his body be-
gotten, and that vpon the same condition, that
is to say, if the second sonne alien &c. that then
his estate should cease, and that then the same
lands & tenements should remaine to the third
sonne, and to the heires of his body begotten
&c. the remainder to other of his sonnes, and
liuery of seisin was made according. But it
seemeth by reason that all such remainders in
the forme beforesaid be void, and of no value,
and that for three causes. One cause is, be-
cause euery remainder that beginneth by a
deed, it behoueth that the remainder be in him
to whom the remainder is tailed by force of the
same deede when the liuery of seisin is made to
him that hath the franktenement. And such
remainder was not to the second sonne at
the time of liuery of seisin in case before
said &c.

The second cause is, if the first sonne
alien the tenements in fee, then is the frank-
tenement and the fee simple in the alienee and
in none other, and if the donour had any reuer-
sion by such alienation, the reuersion is dis-
continued, then though that by some reason
it may be that such remainder shall begin his
being and his growing immediatly after
such alienation made to a straunger, that had
by the same alienation franktenement and
fee simple, and also if such remainder should

be

be good, then might he enter vpon the alienee where he had no maner of right before the alienatiō, which should be inconueniēt. The third cause is, when the condition is such, that if the eldest son alien &c. that his estate shall cease, or shall be void &c. then after such alienation &c. may the donor enter by force of such condition &c. as it seemeth, and so the donor or his heires in such case ought more sooner to haue the lād, then the second sonne that hath no right before such alienation &c. and so it seemeth that such remainders in the case aforesaid be void.

Also, at the common law before the statute of Gloucester, if the tenaunt by curtesie had aliened in fee with warrantie according, after his decease this was a barre to the heir &c. as it appeareth by the wordes of the same statute: But it is remedied by the same statute that the warranty of the tenant by the curtesie shall be no barre to the heire, except hee haue enough by discent by the tenant by the curtesie, for before the said estatute that was a collaterall warrantie to the heire, because hee could not conuey any title of discent to the tenements by the Tenant by the curtesie, but only by his mother or other of his auncestors &c. and that is the cause why it was collateral warrantie. But if a man enheriter, take a wife, which haue issue a sonne betweene them and the father dieth, & the sonne entreth into the land, and endoweth his mother, and after his mother alieneth that that shee hath in her

dower

dower to an other in fee, with warranty and dieth, and after dyeth, and the warranty discendeth to the sonne, now the sonne shall be barred to demaund the same land, because of the said warranty, because that such collaterall warranty of tenant in dower is not remedied by any statute. The same Law is when tenant for terme of life maketh an alienation with warranty &c. and dyeth, and the warrantie discendeth to him that had the reuersion, or the remainder &c. they shall be barred by such warranty &c.

Also, in the said case, if it so were, that when the tenant in Dower alieneth &c. the heire was within age, and also at that time that the warrantie discendeth vpon him, he was within age, in this case the heire may after enter vpon the alienée, notwithstanding the warranty discended &c. because that no laches shal be adiudged in the heire within age, that he entred not vpon the alienée in the life of the tenant in Dower, but if the heire was within age at the time of the alienation, and after he came to full age in the life of the tenant in Dower, and so being of full age, he entred not in the life of the tenant in Dower, and after the tenant in Dower dyeth, there peraduenture the heire shall be barred by such warrantie, because it shall be accounted his folly that he being of full age, entred not in the life of the tenant in Dower &c.

Also, it is spoken in the end of the said

estatute of Glouceſter, that ſpeaketh of the alienation with warranty made by the tenant by the curteſie in ſuch forme.

Alſo, in the ſame maner the heire of the woman after the death of his father and mother ſhall not be barred of action, if he demaund the heritage or the marriage of his mother by a writ of Entry that his father alienedin the time of his mother, whereof no fine is leuied in the kings court &c. And ſo by force of the ſame ſtatute, if the huſband of the wife alien the heritage or mariage of his wife in fée with warranty &c. by his deede in the countrey, this is cleere law, that this warranty ſhall not barre the heire, except he haue ynough by diſcent &c. But the doubt is, if that the huſband allen the heritage of his wife by fine leuied in the kings courts with warranty &c. if this ſhall barre the heire without any diſcent in value &c. And as to that I will ſay here certaine reaſons that I haue heard ſay in this matter. I heard my Maſter Sir Rich. Newton late chiefe Iuſtice of the common place ſay once in the ſame place, that ſuch warranty that the baron maketh by fine leuied in the kings Court, ſhall barre ꝑ heire, though that he haue nothing by diſcent, becauſe the ſtatute ſaith, whereof no fine is leuied in the kings court &c. And ſo by his opinion, this warranty by fine &c. abideth yet a collaterall warranty, as it was at the common law not remedied by the ſaid eſtatute, becauſe that the ſaid eſtatute excepteth the

alienation by fine with warranty. And some other haue said, & yet say the contray, & this is their proofe, that as by the same chapter of the said estatute is ordeined, that the warranty of the Tenant by the curtesie shall not barre the heire, except he haue ynough by discent &c. though that the tenant by the curtesie leuie a fine of the same lands with warranty &c as strongly as he can, yet this warranty shall not barre the heir, except he haue assets or ynough by discent &c. And I beleeue that this is law, and therefore they say, that it should be inconuenient to vnderstand the statut in such forme that a man that hath not but in the right of his wife, may by fine leuied by himselfe of the tenements that he hath but in the right of his wife with warranty &c. barre the heire of the said tenements without discent of the fee simple &c. where the tenant by the curtesie cannot do it. But they haue said, that the statute shall be vnderstood after this forme, that is to say, where the statute speaketh, whereof no fine is leuied in the kings court, that is to say, whereof no lawfull fine is rightfully leuied in the same kings Court, and that is whereof no fine of the husband and his wife is leuied in the kings court, for at the time of the making of the said statute, euery estate of landes & tenements that any man or woman had that should discend to his heire, was fee simple without condition, or vpon condition in deed or in law. And because that such fine that might

might lawfully haue bẽn leuyed by the husband and his wife, and that if the heires of the husband warrant &c. such warrantie shall barre the heire &c.

Also so they say, that this is the vnderstanding of the said statute, for if the husband and the wife made a feoffement in fee by deede in the countrey, the heire after the decease of the husband & the wife shall haue a writ of Entrie sur Cui in vita &c. notwithstãding the warranty of the husband: Then if no such exception was made in the statute of the fine leuied &c. then the heire should haue the writ of Entrie &c. notwithstanding the fine leuied by the husband and the wife, because that the words of the statute before the exception of the fine leuied &c. be generall &c. that is to say, that the heire of the woman after the death of her husband & the wife, shall not be barred of action, if he demaund the heritage or the mariage of his mother by a writ of Entrie, that his father alened in the time of his mother, & so it should be in that case of the statute, except such words were, that is to say, whereof no fine is leuied in the Kings Court: and so they say, that this is to be vnderstood, whereof no fine by the husband & the wife is leuied in the Kings court, the which is lawfully leuied in such case: For if the Iustices haue knowledge ỹ a man that hath nothing but in the right of his wife, will leuie a fine in his name only, they will not, nor ought not to take such fine to be leuied by the hus-

husband only, without naming the wife, therefore inquire of this matter.

Also, it is to wit, that in such words where the heire demaundeth the heritage or mariage of his mother, this word (Or) is a disiunctiue, & is as much to say, if the heire demaund the heritage of his mother, that is to be understood, the tenements that his mother had in fée simple by discent, or by purchase, or if the heire demaund the mariage of his mother, that is to say, the tenements that were giuen with his mother in frankmariage.

Also, where it is moued in diuers déeds these words in Latine, Ego & hered' mei &c. warrantizabimus, & imperpetuũ defendemus, it is to sée what effect hath that word Defendemus in such déeds: & it séemeth that it hath not the effect of warrantize, nor comprehendeth any clause of warrantize, for if it should be so, that it taketh effect, or cause of warrantize, then it should be put in some fines leuied in the Kings Court. And a man neuer sith that this word Defendemus was in a fine, but only this word Warrantizabimus, by which it séemeth that this Verbe Warrantizo maketh warranty, and is the cause of warrantize, and none other word in our Law.

Also, if Tenant in the taile be seised of tenements deuisable by testament after the custome &c. and the Tenant in the taile alieneth the tenements to his brother in fée, and hath issue and dieth, and after his brother deuiseth by

by his testament ꝯ same tenements to an other in fee, and bindeth him & his heires to warrantize &c. and dieth without issue, it seemeth that this warranty shall not barre the issue in the taile, if he will sue his writ of Formedon, because that the warranty discended not to the issue in the taile, inasmuch as the vncle of the issue was not bound by force of the same warranty in his life: And the cause that he could not warrant the land in his life is, insomuch that the deuise could not take any execution or effect but after his decease, & insomuch that the vncle in his life was not held to warranty, such warrantize may not discend from him to the issue in ꝯ taile &c. for nothing may discend from the auncestor to his heire, but the same that was in the auncestor. Also a warranty may not go after the nature of tenements by custome, but only after the forme of ꝯ common law. For if tenãt in taile be seised of tenemẽts in borough english, where the custome is, that all tenements of the same Borough, ought to discend to the yongest son, & he discontinueth the taile with warranty &c. and hath issue two sons & dieth seised of other lands & tenements in the same borough in fee simple to the value and more of the tenements tailed &c. yet the yongest sonne shall haue a Formedon of the tenements tayled, and shall not be barred by the warrantize of his Father, though enough to him discended in fee simple from the same Father after the custome, for this that the warrantize

rantize discendeth vpon the elder brother that is in full life &c. and not vpon the yongest son. In the same maner it is of collaterall warrantize made of such tenements where ſ warrantize discendeth to the elder son &c. this shall not barre the ponger son &c. In the same maner it is of tenements in the Shire of Kent, which is called Gauelkind, the which tenments be departible among the brethren &c. after the custome &c. if any such warranty be made by their auncestors, such warranty discendeth all only to the heire that is heire by the common law, & not to all the heires which are heires of such tenements after the custome &c.

Also, if tenant in the taile haue issue two daughters by diuers venters, and dyeth, and the daughters enter, and a stranger disseiseth them of the same tenements, and one of the daughters releaseth by her deed to the disseisor all her right, and bindeth her and her heires to warrantize, and dieth without issue, in this case the sister that suruiueth may well enter & put out the disseisor of all the tenements, for this that such warrantize is no discontinuance, nor collaterall warrantize to the sister that suruiueth, for this that they be of halfe blood. and the one may not be heire to the other after the common Law. But otherwise it is where there be daughters of tenants in the taile by one venter.

Also, if tenant in the taile let tenements to an other for terme of life, the remainder to an

other in fée, & the collaterall auncestor confirmeth the estate of the tenant for terme of life, and bindeth him and his heires to warrantize for terme of life of the tenant for terme of life & dyeth, and the tenant in the taile hath issue & dyeth, now this issue is barred to aske the tenemẽts by writ of Formedon during the life of the tenant for terme of life, because of the collaterall discent vpon the issue in the taple. But after the decease of the tenant for terme of life, the issus shall haue a Formedon &c. And vpon this I haue heard a reason, that this case shall proue an other case: that is to say. If a man let his land to an other, to haue & to hold vnto him & to his heires for terme of an others life, and the lessour dyeth, lyuing him to whose lyfe &c. and a stranger entreth into the land, that the heir of the lesse may put him out, for this that in the case next aforesaid, in somuch that a man may binde him and his heires to warrant to the tenant for terme of life, all onely during the life of the tenant for terme of life, and the warrantize discendeth to the heire of him that made the warrantize, the which warrantize is no warrantize of inheritance, but all onely for terme of an others life. By the same reason where tenements be let to a man, to haue and to hold to him and to his heires for terme of an others lyfe if the father die, lyuing him to whose lyfe &c. his heire shall haue the tenements lyuing him to whose life &c. For they haue said, that if a man grant

an annuitie to an other, to haue and to take to him and to his heires for terme of an others life, if the graunte die &c. that after his heire shall haue the annuitie during the life of him to whose life &c. Quære de ista materia &c.

But where such a lease or graunt is made to a man and his heires for terme of yeares, in this case the heire of the lesse & the graunte shall neuer haue after the death of the lesse or the graunte that, that is so letten or graunted, for this that it is a chattell reall, and all chatteis reals by the common law, shall come to the executors of the graunte, or the lesse, and not to the heire &c.

Also in some cases it may be, that howbeit that a collateral warrantize be made in fee &c. yet such warrantize may be defeated and aniented. As the tenant in the taile discontinueth the taile in fee, & the discontinuee is disseised, & the brother of the tenant in the taile releaseth by his deed to the disseisor al his right &c. with warrantize in fee, and dieth without issue, and the tenant in the taile hath issue & dieth, now the issue is barred of his action by force of the collaterall warrantie descending vpon him, but if after this the discontinuee enter vpō the disseisour, then may the heire in the taile haue his action of Formedon &c. for this that the warranty is anienied & defeated. For when the warrantize is made vnto a man vpon any estate that then he had, if the estate be defeated, the warrantie is defeated.

In

In the same maner it is, if the discontinuē make a feoffement in fē reseruing to him certein rent, & for default of paiment a reentrie &c. & a collaterall auncestor releaseth to the feoffee that hath estate vpon condition &c. and dyeth without issue, though that the warranty discended vpon the issue in the taile, yet if after the rent be behind, & the discontinuee entreth into the land &c. then the issue in the taile shall haue his recouery by a writ of Formedon, for this that the warranty collaterall is defeated. And so if any such collaterall warranty be pleaded against the issue in the taile in his action of Formedon, he may shew the matter as is aforesaid, how the warrantie is defeated, and so he may well maintaine his action.

Also if a tenant in the taile make a feffemēt to his vncle, & after his vncle maketh a feoffement in fee with warrantize &c. to an other, & after the feffee of the vncle enfeffeth againe the vncle in fee, & after ꝯ vncle enfeffeth a stranger in fee without warrantize, and dieth without issue, & the tenant in the taile will bring his writ of Formedone against the stranger that was ꝯ last feffee, & that by ꝯ vncle, in this case the issue shal neuer be barred by the warranty that was made by ꝯ vncle to the said first feffee of his vncle, for this that the said warrantize was defeated & anieted, for this that the vncle tooke againe to him as great estate of his said first feffee to whom the warrantize was made, as the same feoffee had of him: And the cause

why

Why the warrantie is anienied in this case, is this, that is to say, that if the warrantize were in his force, then the vncle shall warrant a fée simple vnto himselfe, that may not be, but if the feffee made estate to the vncle for terme of life, or in fée taile, sauing the reuersion vnto him &c. Or that he made a gift in the taile to the vncle, or a lease for terme of life, the remainder ouer &c. In this the warrantize is not all vtterly aniented, but it is put in suspence during the estate that the vncle had, for after this that the vncle is dead without issue, then he in the reuersion, or he in the remainder shal barre the issue in the taile of his writ of Formdon by the collaterall warrantize in such case &c. But otherwise it is where the vncle had as great estate in the land by the feffee to whom ꝯ warrantize was made as the feffee had of him &c.

Also, if the vncle after such feoffement made with warrantize, or a release made by him with warrantize be attaint of felony, or outlawed of felony such collaterall warranty shal not barre nor greeue the issue in the taile, for this that by the attainder of felony, the bloud is corrupt betweene them &c.

Also, if tenant in the taile be disseised, and after maketh a release to the disseisour with warrantize in fée, and after the tenant in the taile is attaint or outlawed of felony, and hath issue and dyeth, in this case the issue in the taile may enter vpon the disseisour: And the cause is for this, that nothing maketh dis-

continuance in this case but the warranty, & the warranty may not discend to the issue in the taile, for this that the blood is corrupt betweene him that made the warrantize and the issue in the taile, for the warrantize alway abideth at the common Law, & the common law is such, that when a man is outlawed, or attaint of felonie, which outlawrie is an attainder in the Law, that the blood betweene him & his sonne, and all other which should be said his heires is corrupt, so that nothing by discent may discend to any that may be his heire by the common Law: And the wife of such a man that is so attaint shall neuer be indowed in the tenements of her husband so attaint &c. And the cause is, because men should more eschue to do felony &c. But ꝑ issue in the taile, as to the tenements tailed, is not in such case barred, because he is inheritable by force of the statute, & not by the course of the cõmon law. And therfore such attainder of his father, or his ancestor in the taile &c. shal not put him out of his right, that he should haue by force of the taile.

Also, if tenant in the taile infeoffe his Uncle, which infeoffeth an other with warranty &c. if after the feoffee by his deed release to the vncle all maner of warranties, or all maner of couenants reals, or all maner of demaunds, by such releas the warranty is extinct. And if the warranty in such case be pleaded against the heire in the tayle that bringeth his writ of Formedon to barre the heire of his

his action, if the heire haue and plead the said releasse &c. he shall defeat the plee in barre &c. and many other causes and matters there be whereby a man may defeat warranties.

And it is to wit, that in the same maner as collaterall warranty may be defeated by matter in deed, or in law, in the same maner may lineall warranty be defeated &c. For if the heire in the taile bring a writ of Formedon, and a lineall warranty of his auncestor inheritable by force of the taile be pleaded against him with that that assets to him discended of fee simple by the same auncestor that made the warranty, if the heire that is demandant may adnull and defeat the warrantie, this sufficeth to him: for the discent of other tenements of fee simple make nothing to barre the heire without the warranty &c.

FINIS.

¶ Here beginneth the Table of *this present Booke.*

NOw I haue made for thée my Sonne thrée Bookes. The first is of Estates that men haue of lands or tenements, that is to say.

Of Tenant in Fée simple.
Tenant in Fée tatle.
Tenant in the Tatle after possibilitie of issue extinct.
Tenant by the Curtesie of England.
Tenant in Dower.
Tenant for terme of life.
Tenant for terme of yeares.
Tenant at will by the Common Law.
Tenant at will by the Custome of the manor.

¶ The second Booke.

¶ The second Booke is, Of Homage.
Fealty.
Escuage.
Knights seruice.
Socage.
Frankalmoigne, or Fré almes.
Homage auncestrell.
Graund Sergeanty.
Petie Sergeanty.
Tenure in Burgage.
Tenure in Villenage.
Of thrée maner of Rents: that is to say,
Rent seruice.

Rent

Rent charge, and
Rent secke.

And these two small Bookes have I made for thee, for to vnderstand better certain chapters of the auncient bookes of Tenures.

¶ The third Booke.

¶ The third Booke is, Of Parceners.
Of Jointenants.
Tenants in common.
Estates of lands or tenements vpon Condition.
Discents that take away Entries.
Continuall claime.
Releases.
Confirmations.
Attournements.
Remitters.
Of warranties, that is to say:
Warranty lineall.
Warranty collaterall, and
Warranty that beginneth by disseisin.

And know thou my Sonne, that I will not that thou beleeue, that all that that I haue said in the said Bookes is law, for that will I not take vpon mee, nor presume: But of those things that be not Law, inquire and learne of my wise Maisters learned in the Law.

Notwithstanding, though that certaine things that be noted and specified in the said

Bookes

Bookes be not Lawe, yet such thinges shall make thee more apt and able to vnderstand, and learne the Arguments and the reasons of the Lawe: For by the arguments and the reasons in the Lawe, a man may more soner come to the certaintie, and to the knowledge of the Lawe.

Lex plus laudatur, quando ratione probatur.

FINIS.